

(Pub. L. 95-557, title VIII, §805, Oct. 31, 1978, 92 Stat. 2123.)

§ 8145. Coordination and development of program with other Federal and non-Federal programs

The Secretary shall coordinate the administration of the provisions of this subchapter in cooperation with other Federal agencies and assure that projects assisted under this subchapter are coordinated with efforts undertaken by State and local public and private entities, including arts organizations.

(Pub. L. 95-557, title VIII, §806, Oct. 31, 1978, 92 Stat. 2124.)

§ 8146. Authorization of appropriations

There are authorized to be appropriated for carrying out the purposes of this subchapter not to exceed \$5,000,000 for fiscal year 1979, and not to exceed \$5,000,000 for fiscal year 1980. Any amounts appropriated under this section shall remain available until expended.

(Pub. L. 95-557, title VIII, §807, Oct. 31, 1978, 92 Stat. 2124; Pub. L. 96-153, title I, §108, Dec. 21, 1979, 93 Stat. 1105.)

AMENDMENTS

1979—Pub. L. 96-153 reduced authorization of appropriation for fiscal year 1980 from “\$10,000,000” to “\$5,000,000”.

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SUBCHAPTER I—GENERAL PROVISIONS

§ 8201. Findings and statement of purposes

(a) Findings

The Congress finds that—

(1) the United States has survived a period of energy shortage and has made significant progress toward improving energy efficiency in all sectors of the economy;

(2) effective measures must continue to be taken by the Federal Government and other users and suppliers of energy to control the rate of growth of demand for energy and the efficiency of its use;

(3) the continuation of this effort will permit the United States to become increasingly independent of the world oil market, less vulnerable to interruption of foreign oil supplies, and more able to provide energy to meet future needs; and

(4) all sectors of the economy of the United States should continue to reduce significantly the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.

(b) Statement of purposes

The purposes of this chapter are to provide for the regulation of interstate commerce, to reduce the growth in demand for energy in the United States, and to conserve nonrenewable energy resources produced in this Nation and elsewhere, without inhibiting beneficial economic growth.

(Pub. L. 95-619, title I, § 102, Nov. 9, 1978, 92 Stat. 3208; Pub. L. 99-412, title I, § 101, Aug. 28, 1986, 100 Stat. 932.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, as amended, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-412 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Congress finds that—

“(1) the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand;

“(2) unless effective measures are promptly taken by the Federal Government and other users of energy to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market, increasingly vulnerable to interruptions of foreign oil supplies, and unable to provide the energy to meet future needs; and

“(3) all sectors of our Nation’s economy must begin immediately to significantly reduce the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-615, § 1, Nov. 5, 1988, 102 Stat. 3185, provided that: “This Act [enacting section 5001 of Title 15, Commerce and Trade, amending sections 6361 and 8251 to 8259 of this title, omitting sections 8260 and 8261 of this title, and enacting provisions set out as a note under section 8253 of this title] may be cited as the ‘Federal Energy Management Improvement Act of 1988’.”

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-412 provided that: “This Act [enacting sections 8227 to 8229 of this title, amending sections 8201, 8211, 8213 to 8220, and 8226 of this title, repealing sections 8281 to 8281b, 8282 to 8282b, 8283, 8283a, and 8284 of this title, and enacting provisions set out as notes under sections 8211, 8216, 8217, 8281, and 8282 of this title] may be cited as the ‘Conservation Service Reform Act of 1986’.”

SHORT TITLE

Section 101(a) of Pub. L. 95-619 provided that: “This Act [enacting this chapter, sections 1490i, 6215, 6311 to 6317, 6344a, 6371, 6371a to 6371j, 6372, 6372a to 6372i, 6373, 6873, and 7141 of this title, and sections 1723f to 1723h of Title 12, Banks and Banking, amending sections 300k-2,

300n-1, 1437c, 1471, 1474, 1483, 6202, 6211, 6233 to 6241, 6243 to 6245, 6272 to 6274, 6291 to 6299, 6303 to 6309, 6321 to 6327, 6341 to 6346, 6361, 6381, 6383, 6392, 6836, 6862, 6863, 6865, and 6872 of this title, sections 1451, 1703, 1709, 1713, 1715z-6, 1717, and 1735f-4 of Title 12, and sections 2006 and 2008 of Title 15, Commerce and Trade, repealing section 6397 of this title, and enacting provisions set out as notes under this section, sections 6321, 6344a, 6345, 6371, and 6372 of this title, section 2006 of Title 15, and section 217 of Title 23, Highways] may be cited as the ‘National Energy Conservation Policy Act’.”

Section 561 of Pub. L. 95-619 provided that: “This part [part 4 (§§ 561-569) of title V of Pub. L. 95-619, enacting sections 8271 to 8278 of this title] may be cited as the ‘Federal Photovoltaic Utilization Act’.”

SUBCHAPTER II—RESIDENTIAL ENERGY CONSERVATION

PART A—UTILITY PROGRAM

§§ 8211 to 8229. Omitted

CODIFICATION

Sections were omitted pursuant to section 8229 of this title, which terminated authority under this part June 30, 1989.

Section 8211, Pub. L. 95-619, title II, § 210, Nov. 9, 1978, 92 Stat. 3209; Pub. L. 96-294, title V, §§ 541, 542(a), June 30, 1980, 94 Stat. 741; Pub. L. 99-412, title I, § 102(d)(1), (h)(1), Aug. 28, 1986, 100 Stat. 933, 934, defined terms for this part.

Section 8212, Pub. L. 95-619, title II, § 211, Nov. 9, 1978, 92 Stat. 3211, related to coverage of this part.

Section 8213, Pub. L. 95-619, title II, § 212, Nov. 9, 1978, 92 Stat. 3211; Pub. L. 96-294, title V, § 542(b), June 30, 1980, 94 Stat. 741; Pub. L. 99-412, title I, § 102(c), (d)(2), (h)(2), Aug. 28, 1986, 100 Stat. 933, 934; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, related to rules of Secretary for submission and approval of plans.

Section 8214, Pub. L. 95-619, title II, § 213, Nov. 9, 1978, 92 Stat. 3213; Pub. L. 96-294, title V, §§ 542(c), 543, 546(b), (c), June 30, 1980, 94 Stat. 742, 744; Pub. L. 99-412, title I, § 102(b)(3), (h)(3), Aug. 28, 1986, 100 Stat. 933, 934, related to requirements for State residential energy conservation plans for regulated utilities.

Section 8215, Pub. L. 95-619, title II, § 214, Nov. 9, 1978, 92 Stat. 3214; Pub. L. 99-412, title I, § 102(h)(4), Aug. 28, 1986, 100 Stat. 934, related to plan requirements for non-regulated utilities and home heating suppliers.

Section 8216, Pub. L. 95-619, title II, § 215, Nov. 9, 1978, 92 Stat. 3215; Pub. L. 96-294, title V, § 544, June 30, 1980, 94 Stat. 742; Pub. L. 99-412, title I, § 102(a)(1), (2)(A), (b)(1), (e), (h)(5)-(7), Aug. 28, 1986, 100 Stat. 932-934, related to utility programs.

Section 8217, Pub. L. 95-619, title II, § 216, Nov. 9, 1978, 92 Stat. 3217; Pub. L. 96-294, title V, §§ 545, 546(a), 547, June 30, 1980, 94 Stat. 743, 744; Pub. L. 99-412, title I, §§ 102(h)(8), (9), 106(a)-(c), Aug. 28, 1986, 100 Stat. 934, 941, 942; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105-388, § 5(c)(2), Nov. 13, 1998, 112 Stat. 3479, related to supply and installation by public utilities.

Section 8218, Pub. L. 95-619, title II, § 217, Nov. 9, 1978, 92 Stat. 3219; Pub. L. 99-412, title I, § 102(a)(1), (b)(2), Aug. 28, 1986, 100 Stat. 932, 933, related to home heating supplier programs.

Section 8219, Pub. L. 95-619, title II, § 218, Nov. 9, 1978, 92 Stat. 3220; Pub. L. 99-412, title I, § 102(g), Aug. 28, 1986, 100 Stat. 934, related to temporary programs.

Section 8220, Pub. L. 95-619, title II, § 219, Nov. 9, 1978, 92 Stat. 3220; Pub. L. 99-412, title I, § 102(f), Aug. 28, 1986, 100 Stat. 933, related to Federal standby authority.

Section 8221, Pub. L. 95-619, title II, § 220, Nov. 9, 1978, 92 Stat. 3222; Pub. L. 96-294, title V, §§ 542(d), 550, June 30, 1980, 94 Stat. 742, 745, provided relationship to other laws.

Section 8222, Pub. L. 95-619, title II, § 221, Nov. 9, 1978, 92 Stat. 3223, authorized promulgation of rules.

Section 8223, Pub. L. 95-619, title II, § 222, Nov. 9, 1978, 92 Stat. 3223; Pub. L. 100-418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, related to product standards.

Section 8224, Pub. L. 95-619, title II, § 223, Nov. 9, 1978, 92 Stat. 3223, authorized appropriations.

Section 8225, Pub. L. 95-619, title II, § 224, Nov. 9, 1978, 92 Stat. 3223, required report on energy conservation in apartment buildings.

Section 8226, Pub. L. 95-619, title II, § 225, Nov. 9, 1978, 92 Stat. 3224; Pub. L. 99-412, title I, § 104(a), Aug. 28, 1986, 100 Stat. 939, provided for reports and dissemination of information.

Section 8227, Pub. L. 95-619, title II, § 226, as added Pub. L. 99-412, title I, § 103(a), Aug. 28, 1986, 100 Stat. 935, related to alternative State plans.

Section 8228, Pub. L. 95-619, title II, § 227, as added Pub. L. 99-412, title I, § 103(a), Aug. 28, 1986, 100 Stat. 937, related to waiver for regulated and nonregulated utilities.

Section 8229, Pub. L. 95-619, title II, § 228, as added Pub. L. 99-412, title I, § 105(a), Aug. 28, 1986, 100 Stat. 941, provided that all authority, including authority to enforce any prohibitions, under this part would terminate June 30, 1989, except that such expiration would not affect any action or proceeding based upon an act committed prior to midnight June 30, 1989, and not finally determined by such date.

PART B—MISCELLANEOUS

§ 8231. Grants for energy conserving improvements; establishment of standards; authorization of appropriations

(1) The Secretary of Housing and Urban Development is authorized to make grants to finance energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of title 12) to projects which are financed with loans under section 1701q of title 12, or which are subject to mortgages insured under section 1715(d)(3) or section 1715z-1 of title 12. The Secretary shall make assistance available under this section on a priority basis to those projects which are in financial difficulty as a result of high energy costs. In carrying out the program authorized by this section, the Secretary shall issue regulations requiring that any grant made under this section shall be made only on the condition that the recipient of such grant shall take steps (prescribed by the Secretary) to assure that the benefits derived from such grants in terms of lower energy costs shall accrue to tenants in the form of lower rentals or to the Federal Government in the form of a lower operating subsidy if such a subsidy is being paid to such recipient.

(2) The Secretary shall establish minimum standards for energy conserving improvements to multifamily dwelling units to be assisted under this section.

(3) There are authorized to be appropriated to carry out the provisions of this section not to exceed \$25,000,000.

(Pub. L. 95-619, title II, § 251(b), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 105-388, § 5(c)(3), Nov. 13, 1998, 112 Stat. 3479.)

AMENDMENTS

1998—Par. (1). Pub. L. 105-388 inserted closing parenthesis after “section 1703(a) of title 12” and substituted “accrue” for “accure”.

§ 8232. Residential energy efficiency standards study

(a) General authority

The Secretary of Housing and Urban Development (hereinafter in this section referred to as

the “Secretary”) shall, in coordination with the Secretary of Agriculture, the Secretary of the Treasury, the Secretary of Veterans Affairs, the Secretary of Energy, and such other representatives of Federal, State, and local governments as the Secretary shall designate, conduct a study, utilizing the services of the National Institute of Building Sciences pursuant to appropriate contractual arrangements, for the purpose of determining the need for, the feasibility of, and the problems of requiring, by mandatory Federal action, that all residential dwelling units meet applicable energy efficient standards. The subjects to be examined shall include, but not be limited to, mandatory notification to purchasers, and policies to prohibit exchange or sale, of properties which do not conform to such standards.

(b) Specific factors

In conducting such study, the Secretary shall consider at least the following factors—

(1) the extent to which such requirement would protect a prospective purchaser from the uncertainty of not knowing the energy efficiency of the property he proposes to purchase;

(2) the extent to which such requirement would contribute to the Nation's energy conservation goals;

(3) the extent to which such a requirement would affect the real estate, home building, and mortgage banking industries;

(4) the sanctions which might be necessary to make such a requirement effective and the administrative impediments there might be to enforcement of such sanctions;

(5) the possible impact on sellers and purchasers as a result of the implementation of mandatory Federal actions, taking into account the experience of the Federal Government in imposing mandatory requirements concerning the purchase and sale of real property as occurred under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and the Federal Disaster Protection Act of 1973;

(6) an analysis of the effect of such a requirement on the economy as a whole and on the Nation's security as compared to the impact on the credit and housing markets caused by such a requirement;

(7) the effect of such a requirement on availability of credit in the housing industry;

(8) the extent to which the imposition of mandatory Federal requirements would temporarily reduce the number of residential dwellings available for sale and the resulting effect of such mandatory actions on the price of those remaining dwelling units eligible for sale; and

(9) the possible uncertainty, during the period of developing the standards, as to what standards might be imposed and any resulting effect on major housing rehabilitation efforts and voluntary efforts for energy conservation.

(c) Comments and findings by Secretary of Energy

The Secretary shall incorporate into such study comments by the Secretary of Energy on the effects on the economy as a whole and on

the Nation's security which may result from the requirement described in subsection (a) of this section as compared to the impact on the credit and housing markets likely to be caused by such a requirement. In addition, the Secretary shall incorporate into such study the following findings by the Secretary of Energy:

(1) the savings in energy costs resulting from the requirement described in subsection (a) of this section throughout the estimated remaining useful life of the existing residential buildings to which such requirement would apply; and

(2) the total cost per barrel of oil equivalent, in obtaining the energy savings likely to result from such requirement, computed for each class of existing residential buildings to which such requirement would apply.

(d) Report date

The Secretary shall report, no later than one year after November 9, 1978, to both Houses of the Congress with regard to the findings made as a result of such study along with any recommendations for legislative proposals which the Secretary determines should be enacted with respect to the subject of such study.

(Pub. L. 95-619, title II, § 253, Nov. 9, 1978, 92 Stat. 3236; Pub. L. 102-54, § 13(q)(12), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b)(5), is Pub. L. 93-533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

The Federal Disaster Protection Act of 1973, referred to in subsec. (b)(5), probably means the Flood Disaster Protection Act of 1973, Pub. L. 93-234, Dec. 31, 1973, 87 Stat. 975, as amended, which enacted sections 4002, 4003, 4012a, 4104 to 4107, and 4128 of this title, amended sections 4001, 4013 to 4016, 4026, 4054, 4056, 4101, and 4121 of this title and sections 24 and 1709-1 of Title 12, repealed section 4021 of this title, and enacted a provision set out as a note under section 4001 of this title. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of this title and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-54 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs”.

§ 8233. Weatherization study

The President shall conduct a study which shall monitor the weatherization activities authorized by this Act and amendments made thereby and those weatherization activities undertaken, independently of this Act and such amendments. The President shall report to the Congress within one year from November 9, 1978, and annually thereafter, concerning—

(1) the extent of progress being made through weatherization activities toward the achievement of national energy conservation goals;

(2) adequacy and costs of materials necessary for weatherization activities; and

(3) the need for and desirability of modifying weatherization activities authorized by this

Act, and amendments made thereby and of extending such activities to a broader range of income groups than are being assisted under this Act and such amendments.

(Pub. L. 95-619, title II, § 254, Nov. 9, 1978, 92 Stat. 3237.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, as amended, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to the requirement that the President report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 40 of House Document No. 103-7.

PART C—RESIDENTIAL ENERGY EFFICIENCY PROGRAMS

§ 8235. “Residential building” defined

As used in this part, the term “residential building” means any building used as a residence which is not a new building to which final standards under sections 6833(a) and 6834¹ of this title apply and which has a system for heating, cooling, or both.

(Pub. L. 95-619, title II, § 261, as added Pub. L. 96-294, title V, § 562, June 30, 1980, 94 Stat. 746.)

REFERENCES IN TEXT

Section 6834 of this title, referred to in text, was repealed by Pub. L. 97-35, title X, § 1041(b), Aug. 13, 1981, 95 Stat. 621.

STATEMENT OF PURPOSE

Section 561 of subtitle C (§§562-563) of title V of Pub. L. 96-294 provided that: “It is the purpose of this subtitle [enacting this part]—

“(1) to establish a program under which the Secretary of Energy may provide assistance to State and local governments to encourage up to four demonstration programs that make energy conservation measures available without charge to residential property owners and tenants under a plan designed to maximize the energy savings available in residential buildings in designated areas; and

“(2) to demonstrate through such program prototype residential energy efficiency plans under which State and local governments, State regulatory authorities, and public utilities may participate in a co-operative manner with public or private entities to install energy conservation measures in the greatest possible number of residential buildings within their respective jurisdictions or service areas.”

§ 8235a. Approval of plans for prototype residential energy efficiency programs and provision of financial assistance for such programs

(a) Plan approval

The Secretary may approve any plan developed by a State or local government, for the establishment of a prototype residential energy efficiency program, which is designed to demonstrate the feasibility, economics, and energy

¹ See References in Text note below.

conserving potential of such program, if an application for such plan is submitted pursuant to section 8235b of this title, the application is approved pursuant to section 8235c of this title, and the plan provides for—

(1) the entering into a contract by a public utility with one or more persons not under the control of, and not affiliates or subsidiaries of, such utility for the implementation of a program to encourage energy conservation, including the supply and installation of the energy conservation measures as specified in such contract in residential buildings located in the portion of the utility's service area designated by the contract, which contract includes the provisions described in subsection (b) of this section;

(2) the selection by the public utility in a fair, open, and nondiscriminatory manner of the person or persons to contract with pursuant to paragraph (1);

(3) the payment by the public utility to the person or persons contracted with under paragraph (1) of a specified price for each unit of energy saved by such utility as a result of the program during the period the contract is in effect, which price is based on the value to the utility of the energy saved;

(4) the determination, by a procedure established by the State or local government developing the plan, of the amount of energy saved by a public utility as a result of the program carried out under the plan, which procedure is described in the contract;

(5) in the case of a regulated public utility, the approval in writing by the State regulatory authority exercising ratemaking authority over such utility of the contract described in paragraph (1), the manner of selection described in paragraph (2), the payment described in paragraph (3), and the procedure described in paragraph (4); and

(6) the enforcement of the provisions of the contract, entered into pursuant to paragraph (1), which are required to be included pursuant to subsection (b) of this section.

(b) Contract requirements

Any contract entered into by a public utility under subsection (a)(1) of this section shall require any person or persons entering into such contract with a public utility to offer to the owner or occupant of each residential building in the portion of the utility's service area designated in the contract, without charge—

(1) an inspection of such building to determine and inform such owner or occupant of—

(A) the energy conservation measures which will be supplied and installed in such residential building pursuant to paragraph (2);

(B) the savings in energy costs that are likely to result from the installation of such energy conservation measures;

(C) suggestions (including suggestions developed by the Secretary) of energy conservation techniques, including adjustments in energy use patterns and modifications in household activities, which can be used by the owner or occupant of the building to save energy and which do not require the in-

stallation of energy conservation measures; and

(D) the savings in energy costs that are likely to result from the adoption of such suggested energy conservation techniques;

(2) the supply and installation, with the approval of the owner of the residential building, in such building in a timely manner of the energy conservation measures which are as specified in the contract and which the owner or occupant was informed (pursuant to the inspection under paragraph (1)) would be supplied and installed in such building; and

(3) a written warranty that at a minimum any defect in materials, manufacture, design, or installation of any energy conservation measures supplied and installed pursuant to paragraph (2), found not later than one year after the date of installation, will be remedied without charge and within a reasonable period of time.

(c) Provision of financial assistance

The Secretary may provide financial assistance to any State or local government to carry out any plan for the establishment of a prototype residential energy efficiency program if the plan is approved under subsection (a) of this section.

(d) Limitation

The Secretary may approve under subsection (a) of this section not more than 4 plans for the establishment of prototype residential energy efficiency programs.

(Pub. L. 95-619, title II, §262, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 746.)

§ 8235b. Applications for approval of plans for prototype residential energy efficiency programs

Each application for the approval of a plan under section 8235a(a) of this title for the establishment of a prototype residential energy efficiency program shall be submitted by a State or local government and shall include, at least—

(1) a description of the plan, including the provisions of the plan specified in section 8235a(a) of this title and a description of the portion of the service area of the public utility proposing to enter into a contract under section 8235a(a)(1) of this title which is designated under the contract;

(2) a description of the manner in which the provisions of the plan specified in section 8235a(a) of this title are to be met;

(3) a description of the contract to be entered into pursuant to section 8235a(a)(1) of this title and the manner in which the requirements of the contract contained in section 8235a(b) of this title are to be met;

(4) the record of the public hearing conducted pursuant to section 8235c(a)(2) of this title; and

(5) any other information determined by the Secretary to be necessary to carry out this part.

(Pub. L. 95-619, title II, §263, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 748.)

§ 8235c. Approval of applications for plans for prototype residential energy efficiency programs

(a) Approval requirements

The Secretary may approve an application submitted under section 8235b of this title for a plan establishing a prototype residential energy efficiency program only if—

(1) the application is approved in writing—

(A) by the public utility which is to enter into the contract under the plan;

(B) by the State regulatory authority having ratemaking authority over such public utility, in the case of a regulated utility; and

(C) by the Governor (or any State agency specifically authorized under State law to approve such plans) of the State whose government is submitting the application (if the application is submitted by a State government) or of the State in which the local government is located (if the application is submitted by a local government); and

(2) the application has been published, a public hearing on the application has been conducted, after notice to the public, at which representatives of the public utility which is to enter into the contract under the plan, persons engaged in the supply or installation of residential energy conservation measures, and members of the public (including ratepayers of such public utility and other interested individuals) had an opportunity to provide comment on the application, and any amendments to the application, which may be made to take into account the proceedings of the hearing, are made.

(b) Factors in approving applications

The Secretary shall take into consideration in approving an application under subsection (a) of this section for a plan establishing a prototype residential energy efficiency program—

(1) the potential for energy savings from the demonstration of the program;

(2) the likelihood that the value of the energy saved by public utilities under the program will be sufficient to cover the estimated cost of the energy conservation measures to be supplied and installed under the program;

(3) the anticipated effects of the program on competition in the portion of the service area of the public utility designated in the contract entered into under the plan; and

(4) such other factors as the Secretary determines are appropriate.

(Pub. L. 95-619, title II, §264, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 748.)

§ 8235d. Rules and regulations

(a) Proposed rules and regulations

The Secretary shall issue proposed rules and regulations to carry out this part not later than 120 days after June 30, 1980.

(b) Final rules and regulations

The Secretary shall issue final rules and regulations to carry out this part not later than 90 days after the issuance of proposed rules and regulations under subsection (a) of this section.

(Pub. L. 95-619, title II, §265, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 749.)

§ 8235e. Authority of Federal Energy Regulatory Commission to exempt application of certain laws

The Federal Energy Regulatory Commission may exempt from any provisions in sections 4, 5, and 7 of the Natural Gas Act (15 U.S.C. 717c, 717d, and 717f) and titles II and IV of the Natural Gas Policy Act of 1978 (15 U.S.C. 3341 through 3348 and 3391 through 3394) the sale or transportation, by any public utility, local distribution company, interstate or intrastate pipeline, or any other person, of any natural gas which is determined (in the case of a regulated utility, company, pipeline, or person) by the State regulatory authority having rate-making authority over such utility, company, pipeline, or person, or (in the case of a nonregulated utility, company, pipeline, or person) by such utility, company, pipeline, or person, to have been conserved because of a prototype residential energy efficiency program which is established under a plan approved under section 8235a(a) of this title, if the Commission determines that such exemption is necessary to make feasible the demonstration of such prototype residential energy efficiency program.

(Pub. L. 95-619, title II, §266, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 749; amended Pub. L. 105-388, §5(c)(4), Nov. 13, 1998, 112 Stat. 3479.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, as amended. Title II of the Natural Gas Policy Act of 1978 was classified generally to subchapter II (§3341 et seq.) of chapter 60 of Title 15, Commerce and Trade, prior to its repeal by Pub. L. 100-42, §2(a), May 21, 1987, 101 Stat. 314. Title IV of the Natural Gas Policy Act of 1978 is classified generally to subchapter IV (§3391 et seq.) of chapter 60 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1998—Pub. L. 105-388 substituted “(15 U.S.C. 717c” for “(17 U.S.C. 717c”.

§ 8235f. Application of other laws

(a) Lack of immunity

No provision contained in this part—

(1) shall restrict any agency of the United States or any State from exercising its powers under any law to prevent unfair methods of competition and unfair or deceptive acts or practices;

(2) shall provide to any person any immunity from civil or criminal liability;

(3) shall create any defenses to actions brought under the antitrust laws; or

(4) shall modify or abridge any private right of action under the antitrust laws.

(b) Utility programs under part A

Any public utility entering into a contract under a plan for the establishment of a prototype residential energy efficiency program approved under section 8235a(a) of this title shall

not be required to carry out, with respect to any residential building located in the portion of the utility's service area designated in the contract, the actions required to be contained in such utility's program by subsections (a) and (b) of section 8216¹ of this title, if the contract requires such actions (or equivalent actions as determined by the Secretary) to be taken.

(c) "Antitrust laws" defined

For purposes of this section, the term "antitrust laws" means—

- (1) the Sherman Act (15 U.S.C. 1 et seq.);
- (2) the Clayton Act (15 U.S.C. 12 et seq.);
- (3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);
- (4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and
- (5) sections 2, 3, and 4 of the Act entitled "An Act to amend section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes" approved June 19, 1936 (15 U.S.C. 21a, 13a, and 13b, commonly known as the Robinson-Patman Antidiscrimination Act).

(Pub. L. 95-619, title II, §267, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 749.)

REFERENCES IN TEXT

Section 8216 of this title, referred to in subsec. (b), was omitted from the Code pursuant to section 8229 of this title, which terminated authority under that section June 30, 1989.

The Sherman Act (15 U.S.C. 1 et seq.), referred to in subsec. (c)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in subsec. (c)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in subsec. (c)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

§ 8235g. Records and reports

(a) Records

Each State and local government submitting any application for a plan which is approved under section 8235a(a) of this title, and each public utility and person or persons entering into a contract under such a plan, shall keep such records and make such reports as the Secretary may require. The Secretary and the Comptroller General of the United States shall have access, at reasonable times and under reasonable conditions, to any books, documents, papers, records, and reports of each such State and local government, utility, and person or persons which the

Secretary determines, in consultation with the Comptroller General of the United States, are pertinent to this part.

(b) Reports

The Secretary shall make an annual report to the President on the activities carried out under this part which shall be submitted to the Congress with the annual report on the activities of the Department of Energy required by section 7267 of this title and which shall contain—

- (1) an estimate of the total amount of energy saved as a result of the activities carried out under this part;
- (2) an estimate of the annual savings in energy anticipated as a result of each prototype residential energy efficiency program established under a plan approved under section 8235a(a) of this title;
- (3) an analysis, developed in consultation with the Federal Trade Commission and the Department of Justice, of the impact on competition of each prototype residential energy efficiency program established under a plan approved under section 8235a(a) of this title; and

- (4) if the Secretary determines that it is appropriate, an analysis of the impact of expanding the approval of plans under section 8235a(a) of this title to establish prototype residential energy efficiency programs, and the provision of financial assistance to such programs, on a national basis and an assessment of the alternative methods by which such an expansion could be accomplished.

(Pub. L. 95-619, title II, §268, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 750.)

§ 8235h. Revoking approval of plans and terminating financial assistance

The Secretary shall revoke the approval of any plan under section 8235a(a) of this title for the establishment of a prototype residential energy efficiency program, and shall terminate the provision of financial assistance under section 8235a(c) of this title to carry out such plan, if the Secretary determines, in consultation with the Federal Trade Commission and after notice and the opportunity for a hearing, that carrying out such plan—

- (1) causes unfair methods of competition;
- (2) has a substantial adverse effect on competition in the portion of the service area of the public utility designated by the contract entered into under the plan; or
- (3) provides a supplier or contractor of energy conservation measures with an unreasonably large share of the contracts for the supply or installation of such measures under such plan in the service area of the public utility designated by the contract entered into under such plan.

(Pub. L. 95-619, title II, §269, as added Pub. L. 96-294, title V, §562, June 30, 1980, 94 Stat. 751.)

§ 8235i. Authorization of appropriations

(a) Authorization of appropriations

There is authorized to be appropriated to carry out this part—

¹ See References in Text note below.

(1) the sum of \$10,000,000 for the fiscal year ending on September 30, 1981; and

(2) the sum equal to \$10,000,000 minus the amount appropriated for the fiscal year ending on September 30, 1981, under the authorization contained in this section, for the fiscal year ending on September 30, 1982.

(b) Availability

Any funds appropriated under the authorization contained in this section shall remain available until expended.

(Pub. L. 95-619, title II, § 270, as added Pub. L. 96-294, title V, § 562, June 30, 1980, 94 Stat. 751.)

PART D—RESIDENTIAL ENERGY EFFICIENCY
RATING GUIDELINES

§ 8236. Voluntary rating guidelines

(a) In general

Not later than 18 months after October 24, 1992, the Secretary, in consultation with the Secretary of Housing and Urban Development, the Secretary of Veterans Affairs, representatives of existing home energy rating programs, and other appropriate persons, shall, by rule, issue voluntary guidelines that may be used by State and local governments, utilities, builders, real estate agents, lenders, agencies in mortgage markets, and others, to enable and encourage the assignment of energy efficiency ratings to residential buildings.

(b) Contents of guidelines

The voluntary guidelines issued under subsection (a) of this section shall—

(1) encourage uniformity with regard to systems for rating the annual energy efficiency of residential buildings;

(2) establish protocols and procedures for—

(A) certification of the technical accuracy of building energy analysis tools used to determine energy efficiency ratings;

(B) training of personnel conducting energy efficiency ratings;

(C) data collection and reporting;

(D) quality control; and

(E) monitoring and evaluation;

(3) encourage consistency with, and support for, the uniform plan for Federal energy efficient mortgages, including that developed under section 946 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12712 note) and pursuant to sections 105 and 106 of the Energy Policy Act of 1992;

(4) provide that rating systems take into account local climate conditions and construction practices, solar energy collected on-site, and the benefits of peak load shifting construction practices, and not discriminate among fuel types; and

(5) establish procedures to ensure that residential buildings can receive an energy efficiency rating at the time of sale and that such rating is communicated to potential buyers.

(Pub. L. 95-619, title II, § 271, as added Pub. L. 102-486, title I, § 102(a), Oct. 24, 1992, 106 Stat. 2787.)

REFERENCES IN TEXT

Section 946 of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (b)(3), is section

946 of Pub. L. 101-625, which is set out as a note under section 12712 of this title.

Sections 105 and 106 of the Energy Policy Act of 1992, referred to in subsec. (b)(3), are sections 105 and 106 of Pub. L. 102-486. Section 105 amended section 12704 of this title and provisions set out as a note under section 12712 of this title. Section 106 is set out as a note under section 12712 of this title.

§ 8236a. Technical assistance

Not later than 2 years after October 24, 1992, the Secretary shall establish a program to provide technical assistance to State and local organizations to encourage the adoption of and use of residential energy efficiency rating systems consistent with the voluntary guidelines issued under section 8236 of this title.

(Pub. L. 95-619, title II, § 272, as added Pub. L. 102-486, title I, § 102(a), Oct. 24, 1992, 106 Stat. 2788.)

§ 8236b. Report

Not later than 3 years after October 24, 1992, the Secretary shall transmit to the President and the Congress a final report containing—

(1) a description of actions taken by the Secretary and other Federal agencies to implement this part;

(2) a description of the action taken by States, local governments, and other organizations to implement the voluntary guidelines issued under section 8236 of this title and any problems encountered in implementing such guidelines; and

(3) recommendations on the feasibility of requiring, as a prerequisite to receiving federally assisted, guaranteed, or insured mortgages, the achievement of a minimum energy efficiency rating.

(Pub. L. 95-619, title II, § 273, as added Pub. L. 102-486, title I, § 102(a), Oct. 24, 1992, 106 Stat. 2788.)

SUBCHAPTER III—FEDERAL ENERGY
INITIATIVE

PART A—DEMONSTRATION OF SOLAR HEATING
AND COOLING IN FEDERAL BUILDINGS

§ 8241. Definitions

As used in the part—

(1) The term “Federal agency” means—

(A) an Executive agency as defined in section 105 of title 5; and

(B) each entity specified in paragraphs (B) through (H) of subsection (1) of section 5721 of title 5.

(2) The term “Federal building” means any building or other structure owned in whole or part by the United States or any Federal agency, including any such structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(3) The term “solar heating” means, with respect to any Federal building, the use of solar energy to meet all or part of the heating needs of such building (including hot water), or all

or part of the needs of such building for hot water.

(4) The term “solar heating and cooling” means the use of solar energy to provide all or part of the heating needs of a Federal building (including hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water.

(5) The term “solar energy equipment” means equipment for solar heating or solar heating and cooling.

(6) The term “Secretary” means the Secretary of Energy.

(Pub. L. 95-619, title V, § 521, Nov. 9, 1978, 92 Stat. 3275.)

§ 8242. Federal solar program

The Secretary, in consultation with the Administrator of the General Services Administration, shall develop and carry out a program to demonstrate the application to buildings of solar heating and solar heating and cooling technology in Federal buildings.

(Pub. L. 95-619, title V, § 522, Nov. 9, 1978, 92 Stat. 3276.)

§ 8243. Duties of Secretary

(a) Duties

In exercising the authority provided by section 8242 of this title, the Secretary, in consultation with the Administrator of the General Services Administration, shall—

(1) promulgate, by rule—

(A) requirements under which Federal agencies shall submit proposals for the installation of solar energy equipment in Federal buildings which are under their control and which are selected in accordance with procedures set forth in such rule, and

(B) criteria by which proposals under subparagraph (A) will be evaluated, which criteria shall provide for the inclusion in each proposal of a complete analysis of the present value, as determined by the Secretary, of the costs and benefits of the proposal to the Federal agency, and for the demonstration, to the maximum extent practicable, of innovative and diverse applications to a variety of types of Federal buildings of solar heating and solar heating and cooling technology, and for location of demonstration projects in areas where a private sector market for solar energy equipment is likely to develop;

(2) evaluate in writing each such proposal pursuant to the criteria promulgated pursuant to paragraph (1)(B), and make such evaluation available to the agency and, upon request, to any person;

(3) provide technical and financial assistance by interagency agreement for implementing a proposal evaluated under paragraph (2) and approved by the Secretary; except that such assistance shall be limited to the design, acquisition, construction, and installation of solar energy equipment;

(4) provide, by rule, that Federal agencies report to the Secretary periodically such information as they acquire respecting mainte-

nance and operation of solar energy equipment for which assistance is provided under paragraph (3);

(5) require that a life cycle cost analysis in accordance with part B be done for any Federal building for which a proposal is submitted under this section and the results of such analysis be included in such proposal; and

(6) if solar energy equipment for which assistance is to be provided under paragraph (3) is not the minimum life-cycle cost alternative, require the Federal agency involved to submit a report to the Secretary stating the amount by which the life-cycle cost of such equipment exceeds the minimum life-cycle cost.

(b) Contents of proposals

Proposals under paragraph (1)(A) of subsection (a) of this section shall include a list of the specific Federal buildings proposed to be provided with solar energy equipment, the funds necessary for the acquisition and installation of such equipment, the proposed implementation schedule, maintenance costs, the estimated savings in fossil fuels and electricity, the estimated payback time, and such other information as may be required by the Secretary.

(c) Initial submission of proposals

Under the requirements established under subsection (a)(1)(A) of this section, initial proposals for the installation of solar energy equipment in Federal buildings selected under subsection (a)(1)(A) of this section shall be submitted not later than 180 days after the date of promulgation of the rule under subsection (a)(1) of this section.

(d) Program to disseminate information to Federal procurement and loan officers

In order to more widely disseminate information about the program under this part and under part B and the benefits of renewable energy and energy efficiency technology, the Secretary shall establish a program which includes site visits and technical briefings, to disseminate such information to Federal procurement officers and Federal loan officers. The Secretary shall utilize available funds for the program under this subsection.

(Pub. L. 95-619, title V, § 523, Nov. 9, 1978, 92 Stat. 3276; Pub. L. 101-218, § 8(a), Dec. 11, 1989, 103 Stat. 1868.)

AMENDMENTS

1989—Subsec. (d). Pub. L. 101-218 added subsec. (d).

§ 8244. Authorization of appropriations

There are authorized to be appropriated to the Secretary through fiscal year ending September 30, 1980, to carry out the purposes of this part not to exceed \$100,000,000. Funds so appropriated may be transferred by the Secretary to any Federal agency to the extent necessary to carry out the purposes of section 8243(a)(3) of this title.

(Pub. L. 95-619, title V, § 524, Nov. 9, 1978, 92 Stat. 3277.)

PART B—FEDERAL ENERGY MANAGEMENT

§ 8251. Findings

The Congress finds that—

(1) the Federal Government is the largest single energy consumer in the Nation;

(2) the cost of meeting the Federal Government's energy requirement is substantial;

(3) there are significant opportunities in the Federal Government to conserve and make more efficient use of energy through improved operations and maintenance, the use of new energy efficient technologies, and the application and achievement of energy efficient design and construction;

(4) Federal energy conservation measures can be financed at little or no cost to the Federal Government by using private investment capital made available through contracts authorized by subchapter VII of this chapter; and

(5) an increase in energy efficiency by the Federal Government would benefit the Nation by reducing the cost of government, reducing national dependence on foreign energy resources, and demonstrating the benefits of greater energy efficiency to the Nation.

(Pub. L. 95-619, title V, §541, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3185.)

AMENDMENTS

1988—Pub. L. 100-615 amended Congressional findings provisions generally.

EX. ORD. NO. 13123. GREENING THE GOVERNMENT THROUGH EFFICIENT ENERGY MANAGEMENT

Ex. Ord. No. 13123, June 3, 1999, 64 F.R. 30851, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95-619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102-486, 106 Stat. 2776), and section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PREAMBLE

SECTION 101. *Federal Leadership.* The Federal Government, as the Nation's largest energy consumer, shall significantly improve its energy management in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change. With more than 500,000 buildings, the Federal Government can lead the Nation in energy efficient building design, construction, and operation. As a major consumer that spends \$200 billion annually on products and services, the Federal Government can promote energy efficiency, water conservation, and the use of renewable energy products, and help foster markets for emerging technologies. In encouraging effective energy management in the Federal Government, this order builds on work begun under EPACT and previous Executive orders.

PART 2—GOALS

SEC. 201. *Greenhouse Gases Reduction Goal.* Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by 30 percent by 2010 compared to such emissions levels in 1990. In order to encourage optimal investment in energy improvements, agencies can count greenhouse gas reductions from improvements in nonfacility energy use toward this goal to the extent that these reductions are approved by the Office of Management and Budget (OMB).

SEC. 202. *Energy Efficiency Improvement Goals.* Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding facilities covered in section 203 of

this order, by 30 percent by 2005 and 35 percent by 2010 relative to 1985. No facilities will be exempt from these goals unless they meet new criteria for exemptions, to be issued by the Department of Energy (DOE).

SEC. 203. *Industrial and Laboratory Facilities.* Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable by 20 percent by 2005 and 25 percent by 2010 relative to 1990. No facilities will be exempt from these goals unless they meet new criteria for exemptions, as issued by DOE.

SEC. 204. *Renewable Energy.* Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. In support of the Million Solar Roofs initiative, the Federal Government shall strive to install 2,000 solar energy systems at Federal facilities by the end of 2000, and 20,000 solar energy systems at Federal facilities by 2010.

SEC. 205. *Petroleum.* Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum within its facilities. Agencies may accomplish this reduction by switching to a less greenhouse gas-intensive, nonpetroleum energy source, such as natural gas or renewable energy sources; by eliminating unnecessary fuel use; or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

SEC. 206. *Source Energy.* The Federal Government shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In such cases, agencies will receive credit toward energy reduction goals through guidelines developed by DOE.

SEC. 207. *Water Conservation.* Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under section 503(f) of this order. Where possible, water cost savings and associated energy cost savings shall be included in Energy-Savings Performance Contracts and other financing mechanisms.

PART 3—ORGANIZATION AND ACCOUNTABILITY

SEC. 301. *Annual Budget Submission.* Each agency's budget submission to OMB shall specifically request funding necessary to achieve the goals of this order. Budget submissions shall include the costs associated with: encouraging the use of, administering, and fulfilling agency responsibilities under Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and other contractual platforms for achieving conservation goals; implementing life-cycle cost-effective measures; procuring life-cycle cost-effective products; and constructing sustainably designed new buildings, among other energy costs. OMB shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products. OMB shall explore the feasibility of establishing a fund that agencies could draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs. Budget requests to OMB in support of this order must be within each agency's planning guidance level.

SEC. 302. *Annual Implementation Plan.* Each agency shall develop an annual implementation plan for fulfilling the requirements of this order. Such plans shall be included in the annual reports to the President under section 303 of this order.

SEC. 303. *Annual Reports to the President.* (a) Each agency shall measure and report its progress in meeting the goals and requirements of this order on an annual basis. Agencies shall follow reporting guidelines as developed under section 306(b) of this order. In order to minimize additional reporting requirements, the

guidelines will clarify how the annual report to the President should build on each agency's annual Federal energy reports submitted to DOE and the Congress. Annual reports to the President are due on January 1 of each year beginning in the year 2000.

(b) Each agency's annual report to the President shall describe how the agency is using each of the strategies described in Part 4 of this order to help meet energy and greenhouse gas reduction goals. The annual report to the President shall explain why certain strategies, if any, have not been used. It shall also include a listing and explanation of exempt facilities.

SEC. 304. *Designation of Senior Agency Official.* Each agency shall designate a senior official, at the Assistant Secretary level or above, to be responsible for meeting the goals and requirements of this order, including preparing the annual report to the President. Such designation shall be reported by each Cabinet Secretary or agency head to the Deputy Director for Management of OMB within 30 days of the date of this order. Designated officials shall participate in the Interagency Energy Policy Committee, described in section 306(d) of this order. The Committee shall communicate its activities to all designated officials to assure proper coordination and achievement of the goals and requirements of this order.

SEC. 305. *Designation of Agency Energy Teams.* Within 90 days of the date of this order, each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, Energy-Savings Performance Contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this order. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the Interagency Energy Management Task Force, as described in section 306(e) of this order.

SEC. 306. *Interagency Coordination.* (a) *Office of Management and Budget.* The Deputy Director for Management of OMB, in consultation with DOE, shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the President to report progress.

(1) OMB, in consultation with DOE and other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this order. The scoring criteria shall include the extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, renewable energy technologies, electricity from renewable energy sources, and other strategies and requirements listed in Part 4 of this order, as well as overall efficiency and greenhouse gas metrics and use of other innovative energy efficiency practices. The scorecards shall be based on the annual energy reports submitted to the President under section 303 of this order.

(2) The Deputy Director for Management of OMB shall also select outstanding agency energy management team(s), from among candidates nominated by DOE, for a new annual Presidential award for energy efficiency.

(b) *Federal Energy Management Program.* The DOE's Federal Energy Management Program (FEMP) shall be responsible for working with the agencies to ensure that they meet the goals of this order and report their progress. FEMP, in consultation with OMB, shall develop and issue guidelines for agencies' preparation of their annual reports to the President on energy management, as required in section 303 of this order. FEMP shall also have primary responsibility for collecting and analyzing the data, and shall assist OMB in ensuring that agency reports are received in a timely manner.

(c) *President's Management Council.* The President's Management Council (PMC), chaired by the Deputy Di-

rector for Management of OMB and consisting of the Chief Operating Officers (usually the Deputy Secretary) of the largest Federal departments and agencies, will periodically discuss agencies' progress in improving Federal energy management.

(d) *Interagency Energy Policy Committee.* This Committee was established by the Department of Energy Organization Act [42 U.S.C. 7101 et seq.]. It consists of senior agency officials designated in accordance with section 304 of this order. The Committee is responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies designated by DOE are required to participate in the Committee. The Committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this order.

(e) *Interagency Energy Management Task Force.* The Task Force was established by the National Energy Conservation Policy Act. It consists of each agency's chief energy manager. The Committee shall continue to work toward improving agencies' use of energy management tools and sharing information on Federal energy management across agencies.

SEC. 307. *Public/Private Advisory Committee.* The Secretary of Energy will appoint an advisory committee consisting of representatives from Federal agencies, State governments, energy service companies, utility companies, equipment manufacturers, construction and architectural companies, environmental, energy and consumer groups, and other energy-related organizations. The committee will provide input on Federal energy management, including how to improve use of Energy-Savings Performance Contracts and utility energy-efficiency service contracts, improve procurement of ENERGY STAR® and other energy efficient products, improve building design, reduce process energy use, and enhance applications of efficient and renewable energy technologies at Federal facilities.

SEC. 308. *Applicability.* This order applies to all Federal departments and agencies. General Services Administration (GSA) is responsible for working with agencies to meet the requirements of this order for those facilities for which GSA has delegated operations and maintenance authority. The Department of Defense (DOD) is subject to this order to the extent that it does not impair or adversely affect military operations and training (including tactical aircraft, ships, weapons systems, combat training, and border security).

PART 4—PROMOTING FEDERAL LEADERSHIP IN ENERGY MANAGEMENT

SEC. 401. *Life-Cycle Cost Analysis.* Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the Federal Government's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects. Agencies shall also retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs with efficiency measures will be recognized in their scorecard evaluations.

SEC. 402. *Facility Energy Audits.* Agencies shall continue to conduct energy and water audits for approximately 10 percent of their facilities each year, either independently or through Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

SEC. 403. *Energy Management Strategies and Tools.* Agencies shall use a variety of energy management strategies and tools, where life-cycle cost-effective, to meet the goals of this order. An agency's use of these strategies and tools shall be taken into account in assessing the agency's progress and formulating its scorecard.

(a) *Financing Mechanisms.* Agencies shall maximize their use of available alternative financing contracting

mechanisms, including Energy-Savings Performance Contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-Savings Performance Contracts, which are authorized under the National Energy Conservation Policy Act, as modified by the Energy Policy Act of 1992, and utility energy-efficiency service contracts provide significant opportunities for making Federal facilities more energy efficient at no net cost to taxpayers.

(b) *ENERGY STAR® and Other Energy Efficient Products.*

(1) Agencies shall select, where life-cycle cost-effective, ENERGY STAR® and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR® labels are not yet available, agencies shall select products that are in the upper 25 percent of energy efficiency as designated by FEMP. The Environmental Protection Agency (EPA) and DOE shall expedite the process of designating products as ENERGY STAR® and will merge their current efficiency rating procedures.

(2) GSA and the Defense Logistics Agency (DLA), with assistance from EPA and DOE, shall create clear catalogue listings that designate these products in both print and electronic formats. In addition, GSA and DLA shall undertake pilot projects from selected energy-using products to show a “second price tag”, which means an accounting of the operating and purchase costs of the item, in both printed and electronic catalogues and assess the impact of providing this information on Federal purchasing decisions.

(3) Agencies shall incorporate energy efficient criteria consistent with ENERGY STAR® and other FEMP-designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for Basic Ordering Agreements, Blanket Purchasing Agreements, Government Wide Acquisition Contracts, and all other purchasing procedures.

(4) DOE and OMB shall also explore the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products. Within 9 months of the date of this order, DOE shall report back to the President’s Management Council on the viability of such alternative financing options.

(c) *ENERGY STAR® Buildings.* Agencies shall strive to meet the ENERGY STAR® Building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by the end of 2002. Agencies may use Energy-Savings Performance Contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to buildings in order to meet the criteria. Buildings that rank in the top 25 percent in energy efficiency relative to comparable commercial and Federal buildings will receive the ENERGY STAR® building label. Agencies shall integrate this building rating tool into their general facility audits.

(d) *Sustainable Building Design.* DOD and GSA, in consultation with DOE and EPA, shall develop sustainable design principles. Agencies shall apply such principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using Energy-Savings Performance Contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(e) *Model Lease Provisions.* Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of building performance. Agencies shall include a preference

for buildings having the ENERGY STAR® building label in their selection criteria for acquiring leased buildings. In addition, all agencies shall encourage lessors to apply for the ENERGY STAR® building label and to explore and implement projects that would reduce costs to the Federal Government, including projects carried out through the lessors’ Energy-Savings Performance Contracts or utility energy-efficiency service contracts.

(f) *Industrial Facility Efficiency Improvements.* Agencies shall explore efficiency opportunities in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching, including cogeneration and other efficiency and renewable energy technologies.

(g) *Highly Efficient Systems.* Agencies shall implement district energy systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power when upgrading and assessing facility power needs and shall use combined cooling, heat, and power systems when life-cycle cost-effective. Agencies shall survey local natural resources to optimize use of available biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(h) *Off-Grid Generation.* Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

SEC. 404. *Electricity Use.* To advance the greenhouse gas and renewable energy goals of this order, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency’s efforts in purchasing electricity from efficient and renewable energy sources shall be taken into account in assessing the agency’s progress and formulating its score card.

(a) *Competitive Power.* Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

(b) *Reduced Greenhouse Gas Intensity of Electric Power.* When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

(c) *Purchasing Electricity from Renewable Energy Sources.*

(1) Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the President. Based on this review, each agency should adopt policies and pursue projects that increase the use of such electricity. Agencies should include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

(2) In evaluating opportunities to comply with this section, agencies should consider: my Administration’s goal of tripling nonhydroelectric renewable energy capacity in the United States by 2010; the renewable portfolio standard specified in the restructuring guidelines for the State in which the facility is located; GSA’s efforts to make electricity from renewable energy sources available to Federal electricity purchasers; and EPA’s guidelines on crediting renewable energy power in implementation of Clean Air Act [42 U.S.C. 7401 et seq.] standards.

SEC. 405. *Mobile Equipment.* Each agency shall seek to improve the design, construction, and operation of its

mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

SEC. 406. *Management and Government Performance.* Agencies shall use the following management strategies in meeting the goals of this order.

(a) *Awards.* Agencies shall use employee incentive programs to reward exceptional performance in implementing this order.

(b) *Performance Evaluations.* Agencies shall include successful implementation of provisions of this order in areas such as Energy-Savings Performance Contracts, sustainable design, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects in the position descriptions and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees.

(c) *Retention of Savings and Rebates.* Agencies granted statutory authority to retain a portion of savings generated from efficient energy and water management are encouraged to permit the retention of the savings at the facility or site where the savings occur to provide greater incentive for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources.

(d) *Training and Education.* Agencies shall ensure that all appropriate personnel receive training for implementing this order.

(1) DOE, DOD, and GSA shall provide relevant training or training materials for those programs that they make available to all Federal agencies relating to the energy management strategies contained in this order.

(2) The Federal Acquisition Institute and the Defense Acquisition University shall incorporate into existing procurement courses information on Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, ENERGY STAR® and other energy efficient products, and life-cycle cost analysis.

(3) All agencies are encouraged to develop outreach programs that include education, training, and promotion of ENERGY STAR® and other energy-efficient products for Federal purchase card users. These programs may include promotions with billing statements, user training, catalogue awareness, and exploration of vendor data collection of purchases.

(e) *Showcase Facilities.* Agencies shall designate exemplary new and existing facilities with significant public access and exposure as showcase facilities to highlight energy or water efficiency and renewable energy improvements.

PART 5—TECHNICAL ASSISTANCE

SEC. 501. Within 120 days of this order, the Director of OMB shall:

(a) develop and issue guidance to agency budget officers on preparation of annual funding requests associated with the implementation of the order for the FY 2001 budget;

(b) in collaboration with the Secretary of Energy, explain to agencies how to retain savings and reinvest in other energy and water management projects; and

(c) in collaboration with the Secretary of Energy through the Office of Federal Procurement Policy, periodically brief agency procurement executives on the use of Federal energy management tools, including Energy-Savings Performance Contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

SEC. 502. Within 180 days of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other

applicable unit in industrial, laboratory, research, and other energy-intensive facilities;

(b) establish criteria for determining which facilities are exempt from the order. In addition, DOE must provide guidance for agencies to report proposed exemptions;

(c) develop guidance to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after 1990 in order to measure progress toward goals;

(d) issue guidance to clarify how agencies determine the life-cycle cost for investments required by the order, including how to compare different energy and fuel options and assess the current tools;

(e) issue guidance for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases; and

(f) provide guidance to assist each agency to determine a baseline of water consumption.

SEC. 503. Within 1 year of this order, the Secretary of Energy, in collaboration with other agency heads, shall:

(a) provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;

(b) develop goals for the amount of energy generated at Federal facilities from renewable energy technologies;

(c) support efforts to develop standards for the certification of low environmental impact hydropower facilities in order to facilitate the Federal purchase of such power;

(d) work with GSA and DLA to develop a plan for purchasing advanced energy products in bulk quantities for use in by multiple agencies;

(e) issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use. These guidelines shall include emissions associated with the production, transportation, and use of energy consumed in Federal facilities; and

(f) establish water conservation goals for Federal agencies.

SEC. 504. Within 120 days of this order, the Secretary of Defense and the Administrator of GSA, in consultation with other agency heads, shall develop and issue sustainable design and development principles for the siting, design, and construction of new facilities.

SEC. 505. Within 180 days of this order, the Administrator of GSA, in collaboration with the Secretary of Defense, the Secretary of Energy, and other agency heads, shall:

(a) develop and issue guidance to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs. Incentives for contractors involved in facility design and construction must be structured to encourage the contractors to design and build at the lowest life-cycle cost;

(b) make information available on opportunities to purchase electricity from renewable energy sources as defined by this order. This information should accommodate relevant State regulations and be updated periodically based on technological advances and market changes, at least every 2 years;

(c) develop Internet-based tools for both GSA and DLA customers to assist individual and agency purchasers in identifying and purchasing ENERGY STAR® and other energy efficient products for acquisition; and

(d) develop model lease provisions that incorporate energy efficiency and sustainable design.

PART 6—GENERAL PROVISIONS

SEC. 601. *Compliance by Independent Agencies.* Independent agencies are encouraged to comply with the provisions of this order.

SEC. 602. *Waivers.* If an agency determines that a provision in this order is inconsistent with its mission, the

agency may ask DOE for a waiver of the provision. DOE will include a list of any waivers it grants in its Federal Energy Management Programs annual report to the Congress.

SEC. 603. *Scope.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

(b) This order applies to agency facilities in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction. Agencies with facilities outside of these areas, however, are encouraged to make best efforts to comply with the goals of this order for those facilities. In addition, agencies can report energy improvements made outside the United States in their annual report to the President; these improvements may be considered in agency scorecard evaluations.

SEC. 604. *Revocations.* Executive Order 12902 of March 9 [8], 1994, Executive Order 12759 of April 17, 1991, and Executive Order 12845 of April 21, 1993, are revoked.

SEC. 605. *Amendments to Federal Regulations.* The Federal Acquisition Regulation and other Federal regulations shall be amended to reflect changes made by this order, including an amendment to facilitate agency purchases of electricity from renewable energy sources.

PART 7—DEFINITIONS

For the purposes of this order:

SEC. 701. “Acquisition” means acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

SEC. 702. “Agency” means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of DOD.

SEC. 703. “Energy-Savings Performance Contract” means a contract that provides for the performance of services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations. Such contracts shall provide that the contractor must incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract. Payment to the contractor is contingent upon realizing a guaranteed stream of future energy and cost savings. All additional savings will accrue to the Federal Government.

SEC. 704. “Exempt facility” or “Exempt mobile equipment” means a facility or a piece of mobile equipment for which an agency uses DOE-established criteria to determine that compliance with the Energy Policy Act of 1992 or this order is not practical.

SEC. 705. “Facility” means any individual building or collection of buildings, grounds, or structure, as well as any fixture or part thereof, including the associated energy or water-consuming support systems, which is constructed, renovated, or purchased in whole or in part for use by the Federal Government. It includes leased facilities where the Federal Government has a

purchase option or facilities planned for purchase. In any provision of this order, the term “facility” also includes any building 100 percent leased for use by the Federal Government where the Federal Government pays directly or indirectly for the utility costs associated with its leased space. The term also includes Government-owned contractor-operated facilities.

SEC. 706. “Industrial facility” means any fixed equipment, building, or complex for production, manufacturing, or other processes that uses large amounts of capital equipment in connection with, or as part of, any process or system, and within which the majority of energy use is not devoted to the heating, cooling, lighting, ventilation, or to service the water heating energy load requirements of the facility.

SEC. 707. “Life-cycle costs” means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure. Additional guidance on measuring life-cycle costs is specified in 10 C.F.R. 436.19.

SEC. 708. “Life-cycle cost-effective” means the life-cycle costs of a product, project, or measure are estimated to be equal to or less than the base case (i.e., current or standard practice or product). Additional guidance on measuring cost-effectiveness is specified in 10 C.F.R. 436.18 (a), (b), and (c), 436.20, and 436.21.

SEC. 709. “Mobile equipment” means all Federally owned ships, aircraft, and nonroad vehicles.

SEC. 710. “Renewable energy” means energy produced by solar, wind, geothermal, and biomass power.

SEC. 711. “Renewable energy technology” means technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term also means the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

SEC. 712. “Source energy” means the energy that is used at a site and consumed in producing and in delivering energy to a site, including, but not limited to, power generation, transmission, and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

SEC. 713. “Utility” means public agencies and privately owned companies that market, generate, and/or distribute energy or water, including electricity, natural gas, manufactured gas, steam, hot water, and chilled water as commodities for public use and that provide the service under Federal, State, or local regulated authority to all authorized customers. Utilities include: Federally owned nonprofit producers; municipal organizations; and investor or privately owned producers regulated by a State and/or the Federal Government; cooperatives owned by members and providing services mostly to their members; and other nonprofit State and local government agencies serving in this capacity.

SEC. 714. “Utility energy-efficiency service” means demand side management services provided by a utility to improve the efficiency of use of the commodity (electricity, gas, etc.) being distributed. Services can include, but are not limited to, energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

WILLIAM J. CLINTON.

EX. ORD. NO. 13221. ENERGY EFFICIENT STANDBY POWER DEVICES

Ex. Ord. No. 13221, July 31, 2001, 66 F.R. 40571, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Energy Conservation Policy Act (Public Law 95-619, 92 Stat. 3206, 42 U.S.C. 8252 *et seq.*), as amended by the Energy Policy Act of 1992 (EPACT) (Public Law 102-486, 106 Stat. 2776), and section 301 of title 3, United States Code, and in order

to further encourage energy conservation by the Federal Government, it is hereby ordered as follows:

SECTION 1. *Energy Efficient Standby Power Devices.* Each agency, when it purchases commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function, shall purchase products that use no more than one watt in their standby power consuming mode. If such products are not available, agencies shall purchase products with the lowest standby power wattage while in their standby power consuming mode. Agencies shall adhere to these requirements, when life-cycle cost-effective and practicable and where the relevant product's utility and performance are not compromised as a result. By December 31, 2001, and on an annual basis thereafter, the Department of Energy, in consultation with the Department of Defense and the General Services Administration, shall compile a preliminary list of products to be subject to these requirements. The Department of Energy shall finalize the list and may remove products deemed inappropriate for listing.

SEC. 2. *Independent Agencies.* Independent agencies are encouraged to comply with the provisions of this order.

SEC. 3. *Definition.* "Agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered by the Department of Defense.

GEORGE W. BUSH.

§ 8252. Purpose

It is the purpose of this part to promote the conservation and the efficient use of energy and water, and the use of renewable energy sources, by the Federal Government.

(Pub. L. 95-619, title V, §542, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3185; Pub. L. 102-486, title I, §152(a), Oct. 24, 1992, 106 Stat. 2844.)

AMENDMENTS

1992—Pub. L. 102-486 inserted "and water, and the use of renewable energy sources," after "use of energy".

1988—Pub. L. 100-615 amended section generally, substituting statement of purpose for policy statement declaring it to be United States policy for Federal Government to have the opportunity and responsibility, with participation of industry, to further develop, demonstrate, and promote use of energy conservation, solar heating and cooling, and other renewable energy sources in Federal buildings.

§ 8253. Energy management requirements

(a) Energy performance requirement for Federal buildings

(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2006 through 2015 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003, by the percentage specified in the following table:

Fiscal Year	Percentage reduction
2006	2
2007	4
2008	6
2009	8

2010	10
2011	12
2012	14
2013	16
2014	18
2015	20.

(2) An agency may exclude from the requirements of paragraph (1) any building, and the associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 8258(a) of this title the buildings designated by it for such exclusion.

(3) Not later than December 31, 2014, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2016 through 2025.

(b) Energy management requirement for Federal agencies

(1) Not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States all energy and water conservation measures with payback periods of less than 10 years, as determined by using the methods and procedures developed pursuant to section 8254 of this title.

(2) The Secretary may waive the requirements of this subsection for any agency for such periods as the Secretary may determine if the Secretary finds that the agency is taking all practicable steps to meet the requirements and that the requirements of this subsection will pose an unacceptable burden upon the agency. If the Secretary waives the requirements of this subsection, the Secretary shall, as part of the report required under section 8258(b) of this title, notify the Congress in writing with an explanation and a justification of the reasons for such waiver.

(3) This subsection shall not apply to an agency's facilities that generate or transmit electric energy or to the uranium enrichment facilities operated by the Department of Energy.

(4) An agency may participate in the Environmental Protection Agency's "Green Lights" program for purposes of receiving technical assistance in complying with the requirements of this section.

(c) Exclusions

(1)(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) of this section and the energy management requirement established under subsection (b) of this section, any Federal building or collection of Federal buildings, if the head of the agency finds that—

(i) compliance with those requirements would be impracticable;

(ii) the agency has completed and submitted all federally required energy management reports;

(iii) the agency has achieved compliance with the energy efficiency requirements of this chapter, the Energy Policy Act of 1992, Executive orders, and other Federal law; and

(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.

(2) Each agency shall identify and list, in each report made under section 8258(a) of this title, the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the standards for exclusion set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse the exclusion. In the case of any such reversal, the agency shall comply with the requirements of subsections (a) and (b)(1) of this section for the building concerned.

(3) Not later than 180 days after August 8, 2005, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).

(d) Implementation steps

The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section, each agency shall—

(1) prepare and submit to the Secretary, not later than December 31, 1993, a plan describing how the agency intends to meet such requirements, including how it will—

(A) designate personnel primarily responsible for achieving such requirements;

(B) identify high priority projects through calculation of payback periods;

(C) take maximum advantage of contracts authorized under subchapter VII of this chapter, of financial incentives and other services provided by utilities for efficiency investment, and of other forms of financing to reduce the direct costs to the Government; and

(D) otherwise implement this part;

(2) perform energy surveys of its Federal buildings to the extent necessary and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title;

(3) using such surveys, determine the cost and payback period of energy and water conservation measures likely to achieve the requirements of this section;

(4) install energy and water conservation measures that will achieve the requirements of this section through the methods and procedures established pursuant to section 8254 of this title; and

(5) ensure that the operation and maintenance procedures applied under this section are continued.

(e) Metering of energy use

(1) Deadline

By October 1, 2012, in accordance with guidelines established by the Secretary under para-

graph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility managers.

(2) Guidelines

(A) In general

Not later than 180 days after August 8, 2005, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, energy efficiency advocacy organizations, national laboratories, universities, and Federal facility managers, shall establish guidelines for agencies to carry out paragraph (1).

(B) Requirements for guidelines

The guidelines shall—

(i) take into consideration—

(I) the cost of metering and the reduced cost of operation and maintenance expected to result from metering;

(II) the extent to which metering is expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

(III) the measurement and verification protocols of the Department of Energy;

(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

(iii) establish priorities for types and locations of buildings to be metered based on cost-effectiveness and a schedule of one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

(3) Plan

Not later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 8258(a) of this title, each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with docu-

mentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.

(Pub. L. 95–619, title V, §543, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100–615, §2(a), Nov. 5, 1988, 102 Stat. 3185; Pub. L. 102–486, title I, §152(b), (c), Oct. 24, 1992, 106 Stat. 2844, 2845; Pub. L. 104–66, title I, §1052(b), Dec. 21, 1995, 109 Stat. 718; Pub. L. 109–58, title I, §§102(a)(1), (b)–(e), 103, Aug. 8, 2005, 119 Stat. 606–608.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(1)(A)(iii), was in the original “this Act”, meaning Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3206, as amended, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

The Energy Policy Act of 1992, referred to in subsec. (c)(1)(A)(iii), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–58, §102(a)(1), substituted provisions relating to reduction of energy consumption in fiscal years 2006 to 2015 as compared to consumption in fiscal year 2003 and table of percentages specifying amount of reduction in each fiscal year for provisions relating to energy consumption during fiscal year 1995 at least 10 percent less than consumption during fiscal year 1985 and energy consumption during fiscal year 2000 at least 20 percent less than consumption during fiscal year 1985.

Subsec. (a)(3). Pub. L. 109–58, §102(b), added par. (3).

Subsec. (c)(1). Pub. L. 109–58, §102(c), added par. (1) and struck out former par. (1) which read as follows: “An agency may exclude, from the energy consumption requirements for the year 2000 established under subsection (a) of this section and the requirements of subsection (b)(1) of this section, any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with such requirements would be impractical. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, and, in the cases of the Departments of Defense and Energy, the unique character of certain facilities operated by such Departments.”

Subsec. (c)(2). Pub. L. 109–58, §102(d), substituted “standards for exclusion” for “impracticability standards”, “the exclusion” for “a finding of impracticability”, and “requirements of subsections (a) and (b)(1) of this section” for “energy consumption requirements”.

Subsec. (c)(3). Pub. L. 109–58, §102(e), added par. (3).

Subsec. (e). Pub. L. 109–58, §103, added subsec. (e).

1995—Subsec. (b)(2). Pub. L. 104–66 in last sentence inserted “, as part of the report required under section 8258(b) of this title,” after “the Secretary shall” and struck out “promptly” after “Congress”.

1992—Pub. L. 102–486, §152(b)(1), substituted “requirements” for “goals” in section catchline.

Subsec. (a). Pub. L. 102–486, §152(b)(2), (3), in heading substituted “requirement” for “goal” and in par. (1) inserted before period at end “and so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 2000 is at least 20 percent less than the energy consumption per gross square foot of its Federal buildings in use during fiscal year 1985”.

Subsecs. (b), (c). Pub. L. 102–486, §152(b)(4), added subsecs. (b) and (c). Former subsec. (b) redesignated (d).

Subsec. (d). Pub. L. 102–486, §152(b)(4), (c)(1), redesignated subsec. (b) as (d) and in introductory provisions substituted “The Secretary shall consult with the Sec-

retary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section,” for “To achieve the goal established in subsection (a) of this section,”.

Subsec. (d)(1). Pub. L. 102–486, §152(c)(2), added par. (1) and struck out former par. (1) which read as follows: “prepare or update, within 6 months after November 5, 1988, a plan describing how the agency intends to meet such goal, including how it will implement this part, designate personnel primarily responsible for achieving such goal, and identify high priority projects;”.

Subsec. (d)(2). Pub. L. 102–486, §152(c)(3), inserted before semicolon at end “and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title”.

Subsec. (d)(3) to (5). Pub. L. 102–486, §152(c)(4), (5), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: “using such surveys, apply energy conservation measures in a manner which will attain the goal established in subsection (a) of this section in the most cost-effective manner practicable; and”.

1988—Pub. L. 100–615 amended section generally, substituting energy management goals statement for statement of purpose to promote (1) use of commonly accepted methods to establish and compare life cycle costs of operating Federal buildings, and life cycle fuel and energy requirements of such buildings, with and without special features for energy conservation and (2) use of solar heating and cooling and other renewable energy sources in Federal buildings.

REPORTING BASELINE

Pub. L. 109–58, title I, §102(a)(2), Aug. 8, 2005, 119 Stat. 606, provided that: “The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)), as amended by this subsection, supersede all previous goals and baselines under such paragraph, and related reporting requirements.”

SURVEY OF ENERGY SAVING POTENTIAL

Section 3 of Pub. L. 100–615, which authorized Secretary of Energy to carry out an energy survey to determine maximum potential cost effective energy savings in federally used buildings and recommend cost effective energy efficiency and renewable energy improvements in those buildings, devise a plan for implementing such survey, and report its findings and conclusions to Congress, was repealed by Pub. L. 102–486, title I, §152(i)(3), Oct. 24, 1992, 106 Stat. 2851.

§ 8254. Establishment and use of life cycle cost methods and procedures

(a) Establishment of life cycle cost methods and procedures

The Secretary, in consultation with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the National Institute of Standards and Technology, and the Administrator of the General Services Administration, shall—

(1) establish practical and effective present value methods for estimating and comparing life cycle costs for Federal buildings, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of such system or during a period of 25 years, whichever is shorter, and using average fuel costs and a discount rate determined by the Secretary; and

(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established.

(b) Use of life cycle cost methods and procedures

(1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, shall be made using life cycle cost methods and procedures established under subsection (a) of this section.

(2) In leasing buildings for its own use or that of another agency, each agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease.

(c) Use in non-Federal structures

The Secretary shall make available information to the public on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy.

(Pub. L. 95-619, title V, § 544, Nov. 9, 1978, 92 Stat. 3277; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3186; Pub. L. 102-486, title I, § 152(d), Oct. 24, 1992, 106 Stat. 2845.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, § 152(d)(1), substituted “National Institute of Standards and Technology” for “National Bureau of Standards”.

Subsec. (b)(2). Pub. L. 102-486, § 152(d)(2), substituted “agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease.” for “agency shall give appropriate preference to buildings which minimize life cycle costs.”

1988—Pub. L. 100-615 amended section generally, substituting provisions relating to establishment and use of life cycle cost methods and procedures for provisions defining terms (1) Secretary, (2) life cycle cost, (3) preliminary energy audit, (4) energy survey, (5) Federal building, (6) construction, and (7) energy performance target.

§ 8255. Budget treatment for energy conservation measures

The President shall transmit to the Congress, along with each budget that is submitted to the Congress under section 1105 of title 31, a statement of the amount of appropriations requested in such budget, if any, on an individual agency basis, for—

(1) electric and other energy costs to be incurred in operating and maintaining agency facilities; and

(2) compliance with the provisions of this part, the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.), and all applicable Executive orders, including Executive Order 12003 (42 U.S.C. 6201 note) and Executive Order 12759 (56 Fed. Reg. 16257).

(Pub. L. 95-619, title V, § 545, Nov. 9, 1978, 92 Stat. 3278; Pub. L. 96-294, title IV, § 405, June 30, 1980, 94 Stat. 716; Pub. L. 99-509, title III, § 3301, Oct. 21, 1986, 100 Stat. 1890; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3186; Pub. L. 102-486, title I, § 152(e), Oct. 24, 1992, 106 Stat. 2846.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in par. (2), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Executive Order 12003, referred to in par. (2), is Ex. Ord. No. 12003, July 20, 1977, 42 F.R. 37523 which amended Ex. Ord. No. 11912, April 13, 1976, 41 F.R. 15825, set out as a note under section 6201 of this title.

Executive Order 12759, referred to in par. (2), is Ex. Ord. No. 12759, April 17, 1991, 56 F.R. 16257, as amended, which was set out as a note under section 6201 of this title, prior to revocation by Ex. Ord. No. 13123, § 604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

AMENDMENTS

1992—Pub. L. 102-486 amended section generally. Prior to amendment, section read as follows: “Each agency, in support of the President’s annual budget request to the Congress, shall specifically set forth and identify funds requested for energy conservation measures.”

1988—Pub. L. 100-615 amended section generally, substituting provision relating to budget treatment for energy conservation measures for provisions relating to establishment and use of life cycle cost methods, use of life cycle costs, and use in non-Federal structures.

1986—Subsec. (a)(2). Pub. L. 99-509 substituted “average” for “marginal”.

1980—Subsec. (a)(1). Pub. L. 96-294, which directed amendment of par. (1) by inserting provisions setting forth criteria for establishing life-cycle costs for Federal buildings before the period at end, was executed to par. (2) as the probable intent of Congress because par. (1) does not contain a period.

§ 8256. Incentives for agencies**(a) Contracts**

(1) Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under subchapter VII of this chapter.

(2) The Secretary shall, not later than 18 months after October 24, 1992, and after consultation with the Director of the Office of Management and Budget, the Secretary of Defense, and the Administrator of General Services, develop appropriate procedures and methods for use by agencies to implement the incentives referred to in paragraph (1).

(b) Federal Energy Efficiency Fund

(1) The Secretary shall establish a Federal Energy Efficiency Fund to provide grants to agencies to assist them in meeting the requirements of section 8253 of this title.

(2) Not later than June 30, 1993, the Secretary shall issue guidelines to be followed by agencies submitting proposals for such grants. All agencies shall be eligible to submit proposals for grants under the Fund.

(3) The Secretary shall award grants from the Fund after a competitive assessment of the technical and economic effectiveness of each agency proposal. The Secretary shall consider the following factors in determining whether to provide funding under this subsection:

(A) The cost-effectiveness of the project.

(B) The amount of energy and cost savings anticipated to the Federal Government.

(C) The amount of funding committed to the project by the agency requesting financial assistance.

(D) The extent that a proposal leverages financing from other non-Federal sources.

(E) Any other factor which the Secretary determines will result in the greatest amount of energy and cost savings to the Federal Government.

(4) There are authorized to be appropriated, to remain available to be expended, to carry out this subsection not more than \$10,000,000 for fiscal year 1994, \$50,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years thereafter.

(c) Utility incentive programs

(1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

(2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

(4) If an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.

(5)(A) An amount equal to fifty percent of the energy and water cost savings realized by an agency (other than the Department of Defense) with respect to funds appropriated for any fiscal year beginning after fiscal year 1992 (including financial benefits resulting from energy savings performance contracts under subchapter VII of this chapter and utility energy efficiency rebates) shall, subject to appropriation, remain available for expenditure by such agency for additional energy efficiency measures which may include related employee incentive programs, particularly at those facilities at which energy savings were achieved.

(B) Agencies shall establish a fund and maintain strict financial accounting and controls for savings realized and expenditures made under this subsection. Records maintained pursuant to this subparagraph shall be made available for public inspection upon request.

(d) Financial incentive program for facility energy managers

(1) The Secretary shall, in consultation with the Task Force established pursuant to section 8257 of this title, establish a financial bonus program to reward, with funds made available for such purpose, outstanding Federal facility energy managers in agencies and the United States Postal Service.

(2) Not later than June 1, 1993, the Secretary shall issue procedures for implementing and conducting the award program, including the criteria to be used in selecting outstanding energy managers and contributors who have—

(A) improved energy performance through increased energy efficiency;

(B) implemented proven energy efficiency and energy conservation techniques, devices, equipment, or procedures;

(C) developed and implemented training programs for facility energy managers, operators, and maintenance personnel;

(D) developed and implemented employee awareness programs;

(E) succeeded in generating utility incentives, shared energy savings contracts, and other federally approved performance based energy savings contracts;

(F) made successful efforts to fulfill compliance with energy reduction mandates, including the provisions of section 8253 of this title; and

(G) succeeded in the implementation of the guidelines established under section 8262e¹ of this title.

(3) There is authorized to be appropriated to carry out this subsection not more than \$250,000 for each of the fiscal years 1993, 1994, and 1995.

(e) Retention of energy and water savings

An agency may retain any funds appropriated to that agency for energy expenditures, water expenditures, or wastewater treatment expenditures, at buildings subject to the requirements of section 8253(a) and (b) of this title, that are not made because of energy savings or water savings. Except as otherwise provided by law, such funds may be used only for energy efficiency, water conservation, or unconventional and renewable energy resources projects. Such projects shall be subject to the requirements of section 3307 of title 40.

(Pub. L. 95-619, title V, §546, Nov. 9, 1978, 92 Stat. 3278; Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3187; Pub. L. 102-486, title I, §152(f), Oct. 24, 1992, 106 Stat. 2846; Pub. L. 109-58, title I, §102(f), Aug. 8, 2005, 119 Stat. 607.)

REFERENCES IN TEXT

Section 8262e of this title, referred to in subsec. (d)(2)(G), was in the original "section 159" and was translated as meaning section 159 of Pub. L. 102-486, title I, Oct. 24, 1992, 106 Stat. 2857, which enacted section 8262e of this title, to reflect the probable intent of Congress.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109-58 added subsec. (e).

1992—Subsec. (a). Pub. L. 102-486, §152(f)(1), (2), substituted "Contracts" for "In general" in heading, designated existing provisions as par. (1), and redesignated former subsec. (b) as subsec. (a)(2) and amended it generally. Prior to amendment, par. (2) read as follows: "The head of each agency shall, no later than 120 days after November 5, 1988, implement procedures for entering into such contracts and for identifying, verifying, and utilizing, on a fiscal year basis, the cost savings resulting from such contracts."

Subsec. (b). Pub. L. 102-486, §152(f)(4), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsecs. (c), (d). Pub. L. 102-486, §152(f)(3), (4), added subsecs. (c) and (d) and struck out former subsec. (c) which read as follows: "The portion of the funds appropriated to an agency for energy expenses for a fiscal year that is equal to the amount of cost savings realized by such agency for such year from contracts entered into under subchapter VII of this chapter shall remain available for obligation, without further appropriation, to undertake additional energy conservation measures."

1988—Pub. L. 100-615 amended section generally, substituting statement of incentives for agencies for provisions relating to energy performance targets for Federal buildings.

¹ See References in Text note below.

ENERGY EFFICIENCY AND WATER CONSERVATION
MEASURES; USE OF REBATES AND SAVINGS

Pub. L. 104-52, title VI, § 625, Nov. 19, 1995, 109 Stat. 502, provided that:

“(a) Beginning in fiscal year 1996 and thereafter, for each Federal agency, except the Department of Defense (which has separate authority), and except as provided in Public Law 102-393, title IV, section 13 (40 U.S.C. 490g) [now 40 U.S.C. 592(f)] with respect to the Fund established pursuant to 40 U.S.C. 490(f) [now 40 U.S.C. 592(a)-(c)(1), (d), (e)], an amount equal to 50 percent of—

“(1) the amount of each utility rebate received by the agency for energy efficiency and water conservation measures, which the agency has implemented; and

“(2) the amount of the agency’s share of the measured energy savings resulting from energy-savings performance contracts,

may be retained and credited to accounts that fund energy and water conservation activities at the agency’s facilities, and shall remain available until expended for additional specific energy efficiency or water conservation projects or activities, including improvements and retrofits, facility surveys, additional or improved utility metering, and employee training and awareness programs, as authorized by section 152(f) of the Energy Policy Act (Public Law 102-486) [amending this section].

“(b) The remaining 50 percent of each rebate, and the remaining 50 percent of the amount of the agency’s share of savings from energy-savings performance contracts, shall be transferred to the General Fund of the Treasury at the end of the fiscal year in which received.”

§ 8257. Interagency Energy Management Task Force

(a) In general

To assist the interagency committee organized under section 7266 of this title to coordinate the activities of the Federal Government in promoting energy conservation and the efficient use of energy and in informing non-Federal entities of the Federal experience in energy conservation, the Secretary shall establish an Interagency Energy Management Task Force (hereafter in this section referred to as the “Task Force”).

(b) Members

The Task Force shall be composed of the chief energy managers of agencies represented on the interagency committee organized under section 7266 of this title.

(c) Duties

The Task Force shall meet when the Secretary requests, but not less often than twice a year, to—

(1) assess the progress of the various agencies in achieving energy savings;

(2) collect and disseminate information to agencies, States, local governments, and the public on effective survey techniques, innovative approaches to the efficient use of energy, incentive programs developed under section 8256 of this title, innovative contracting methods developed under subchapter VII of this chapter, the use of cogeneration facilities and renewable resources, and other technologies that promote the conservation and efficient use of energy;

(3) coordinate energy surveys conducted by the agencies;

(4) develop options for use in conserving energy;

(5) report to the committee organized under section 7266 of this title; and

(6) review, from time to time as may be necessary, the regulations relating to building temperature settings to determine whether changes in such regulations would be appropriate to assist in meeting the goals specified in section 8253 of this title.

(Pub. L. 95-619, title V, § 547, Nov. 9, 1978, 92 Stat. 3279; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3187.)

AMENDMENTS

1988—Pub. L. 100-615 amended section generally, substituting provisions relating to creation of an Interagency Energy Management Task Force for provisions relating to energy audits and retrofitting of existing Federal buildings.

§ 8258. Reports

(a) Reports to Secretary

Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

(1) the agency’s progress in achieving the goals established by section 8253 of this title; and

(2) the procedures being used by the agency pursuant to section 8256(a)(2) of this title, the number of contracts entered into by such agency under subchapter VII of this chapter, the energy and cost savings that have resulted from such contracts, the use of such cost savings under section 8256(c) of this title, and any problem encountered in entering into such contracts and otherwise implementing section 8256 of this title.

(b) Reports to the President and Congress

The Secretary shall report, not later than April 2 of each year, with respect to each fiscal year beginning after November 5, 1988, to the President and Congress—

(1) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including—

(A) a copy of the list of the exclusions made under sections 8253(a)(2) and 8253(c)(3) of this title;

(B) the information required under section 8253(b)(2) of this title; and

(C) a statement detailing the amount of funds awarded to each agency under section 8256(b) of this title, the energy and water conservation measures installed with such funds, the projected energy and water savings to be realized from installed measures, and, for each installed measure for which the projected energy and water savings reported in the previous year were not realized, the percentage of such projected savings that was not realized, the reasons such savings were not realized, and proposals for, and projected costs of, achieving such projected savings in the future;

(2) the number of contracts entered into by all agencies under subchapter VII of this chap-

ter, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties;

(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy; and

(4) the information required under section 8262g(d) of this title.

(c) Other report

The Secretary, in consultation with the Administrator of General Services, shall—

(1) conduct a study and evaluate legal, institutional, and other constraints to connecting buildings owned or leased by the Federal Government to district heating and district cooling systems; and

(2) not later than 18 months after October 24, 1992, transmit to the Congress a report containing the findings and conclusions of such study, including recommendations for the development of streamlined processes for the consideration of connecting buildings owned or leased by the Federal Government to district heating and cooling systems.

(Pub. L. 95-619, title V, § 548, Nov. 9, 1978, 92 Stat. 3279; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3187; Pub. L. 102-486, title I, § 152(g), (i)(1), Oct. 24, 1992, 106 Stat. 2848, 2851; Pub. L. 104-66, title I, § 1052(d), Dec. 21, 1995, 109 Stat. 718; Pub. L. 109-58, title I, § 102(g), Aug. 8, 2005, 119 Stat. 608.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109-58 inserted “the President and” before “Congress” in heading and “President and” before “Congress” in introductory provisions.

1995—Subsec. (b)(1). Pub. L. 104-66, § 1052(d)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(4). Pub. L. 104-66, § 1052(d)(2)–(4), added par. (4).

1992—Subsec. (a)(2). Pub. L. 102-486, § 152(i)(1)(A), substituted “8256(a)(2)” for “8256(b)”.

Subsec. (b). Pub. L. 102-486, § 152(i)(1)(B), substituted “, not later than April 2 of each year,” for “annually.”

Subsec. (b)(1). Pub. L. 102-486, § 152(g)(1), substituted “including—” and subpars. (A) and (B) for “including a copy of the list of the exclusions made under section 8253(a)(2) of this title;”.

Subsec. (c). Pub. L. 102-486, § 152(g)(2), added subsec. (c).

1988—Pub. L. 100-615 amended section generally, substituting provisions relating to reports to Secretary and Congress for former requirement that in leasing Federal buildings for its own use or that of another Federal agency, each Federal agency should give appropriate preference to buildings which used solar heating and cooling equipment or other renewable energy sources or which otherwise minimized life cycle costs.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 16th item on page 89 identifies a reporting provision which, as subsequently amended, is contained in subsec. (b) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 8258a. Demonstration of new technology

(a) Demonstration program

Not later than January 1, 1994, the Secretary, in cooperation with the Administrator of Gen-

eral Services, shall establish a demonstration program to install, in federally owned facilities or federally assisted housing, energy conservation measures for which the Secretary has determined that such installation would accelerate commercial viability. In those cases where technologies are determined to be equivalent, priority shall be given to those technologies that have received or are receiving Federal financial assistance.

(b) Selection criteria

In addition to the determination under subsection (a) of this section, the Secretary shall select, in cooperation with the Administrator of General Services, proposals to be funded under this section on the basis of—

(1) cost-effectiveness;

(2) technical feasibility and system reliability in a working environment;

(3) lack of market penetration in the Federal sector;

(4) the potential needs of the proposing Federal agency for the technology, projected over 5 to 10 years;

(5) the potential Federal sector market, projected over 5 to 10 years;

(6) energy efficiency; and

(7) other environmental benefits, including the projected reduction of greenhouse gas emissions and indoor air pollution.

(c) Proposals

Federal agencies may submit to the Secretary, for each fiscal year, proposals for projects to be funded by the Secretary under this section. Each such proposal shall include—

(1) a description of the proposed project emphasizing the innovative use of technology in the Federal sector;

(2) a description of the technical reliability and cost-effectiveness data expected to be acquired;

(3) an identification of the potential needs of the Federal agency for the technology;

(4) a commitment to adopt the technology, if the project establishes its technical reliability and life cycle cost-effectiveness, to supply at least 10 percent of the Federal agency's potential needs identified under paragraph (3);

(5) schedules and milestones for installing additional units; and

(6) a technology transfer plan to publicize the results of the project.

(d) Participation by GSA

The Secretary may only select a project for funding under this section which is proposed to be carried out in a building under the jurisdiction of the General Services Administration if the project will be carried out by the Administrator of General Services. If such project involves a total expenditure in excess of \$1,600,000, no appropriation shall be made for such project unless such project has been approved by a resolution adopted by the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(e) Study

The Secretary shall conduct a study to evaluate the potential use of the purchasing power of

the Federal Government to promote the development and commercialization of energy efficient products. The study shall identify products for which there is a high potential for Federal purchasing power to substantially promote their development and commercialization, and shall include a plan to develop such potential. The study shall be conducted in consultation with utilities, manufacturers, and appropriate nonprofit organizations concerned with energy efficiency. The Secretary shall report to the Congress on the results of the study not later than two years after October 24, 1992.

(f) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section \$5,000,000 for each of the fiscal years 1993, 1994, and 1995.

(Pub. L. 95-619, title V, §549, as added Pub. L. 102-486, title I, §152(h)(2), Oct. 24, 1992, 106 Stat. 2848.)

PRIOR PROVISIONS

A prior section 549 of Pub. L. 95-619 was renumbered section 551 and is classified to section 8259 of this title.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 8258b. Survey of energy saving potential

(a) In general

The Secretary shall, in consultation with the Interagency Energy Management Task Force established under section 8257 of this title, carry out an energy survey for the purposes of—

- (1) determining the maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by the Federal Government in different areas of the country;
- (2) making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar Federal buildings; and
- (3) identifying barriers which may prevent an agency's ability to comply with section 8253 of this title and other energy management goals.

(b) Implementation

(1) The Secretary shall transmit to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, within 180 days after October 24, 1992, a plan for implementing this section.

(2) The Secretary shall designate buildings to be surveyed in the project so as to obtain a sample of the buildings of the types and in the climates that is representative of buildings owned or leased by Federal agencies in the United States that consume the major portion of the energy consumed in Federal buildings. Such

sample shall include, where appropriate, the following types of Federal facility space:

- (A) Housing.
- (B) Storage.
- (C) Office.
- (D) Services.
- (E) Schools.
- (F) Research and Development.
- (G) Industrial.
- (H) Prisons.
- (I) Hospitals.

(3) For purposes of this section, an improvement shall be considered cost effective if the cost of the energy saved or displaced by the improvement exceeds the cost of the improvement over the remaining life of a Federal building or the remaining term of a lease of a building leased by the Federal Government as determined by the life cycle costing methodology developed under section 8254 of this title.

(c) Personnel

(1) In carrying out this section, the Secretary shall utilize personnel who are—

(A) employees of the Department of Energy; or

(B) selected by the agencies utilizing the buildings which are being surveyed under this section.

(2) Such personnel shall be detailed for the purpose of carrying out this section without any reduction of salary or benefits.

(d) Report

As soon as practicable after the completion of the project carried out under this section, the Secretary shall transmit a report of the findings and conclusions of the project to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, and the agencies who own the buildings involved in such project. Such report shall include an analysis of the probability of each agency achieving each of the energy reduction goals established under section 8253(a) of this title.

(Pub. L. 95-619, title V, §550, as added Pub. L. 102-486, title I, §152(h)(2), Oct. 24, 1992, 106 Stat. 2850; amended Pub. L. 109-58, title I, §102(h), Aug. 8, 2005, 119 Stat. 608.)

PRIOR PROVISIONS

A prior section 550 of Pub. L. 95-619 was classified to section 8260 of this title prior to the general amendment of this part by Pub. L. 100-615.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109-58 substituted “each of the energy reduction goals” for “the 20 percent reduction goal”.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on

Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2.

§ 8259. Definitions

For the purposes of this part—

(1) the term “agency” has the meaning given it in section 551(1) of title 5;

(2) the term “construction” means new construction or substantial rehabilitation of existing structures;

(3) the term “cogeneration facilities” has the same meaning given such term in section 796(18)(A) of title 16;

(4) the term “energy conservation measures” means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, or retrofit activities;

(5) the term “energy survey” means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

(6) the term “Federal building” means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection;

(7) the term “life cycle cost” means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease;

(8) the term “renewable energy sources” includes, but is not limited to, sources such as

agriculture and urban waste, geothermal energy, solar energy, and wind energy; and

(9) the term “Secretary” means the Secretary of Energy.

(Pub. L. 95-619, title V, § 551, formerly § 549, Nov. 9, 1978, 92 Stat. 3280; Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3188; renumbered § 551, Pub. L. 102-486, title I, § 152(h)(1), Oct. 24, 1992, 106 Stat. 2848; amended Pub. L. 105-388, § 5(c)(5), Nov. 13, 1998, 112 Stat. 3479.)

PRIOR PROVISIONS

A prior section 551 of Pub. L. 95-619 was classified to section 8261 of this title prior to the general amendment of this part by Pub. L. 100-615.

AMENDMENTS

1998—Par. (8). Pub. L. 105-388 substituted “geothermal” for “goothermal”.

1988—Pub. L. 100-615 amended section generally, substituting provisions relating to definitions for Federal energy management for former provision relating to budget treatment of energy conserving improvements by Federal agencies.

§ 8259a. Energy and water savings measures in congressional buildings

(a) In general

The Architect of the Capitol—

(1) shall develop, update, and implement a cost-effective energy conservation and management plan (referred to in this section as the “plan”) for all facilities administered by Congress (referred to in this section as “congressional buildings”) to meet the energy performance requirements for Federal buildings established under section 8253(a)(1) of this title; and

(2) shall submit the plan to Congress, not later than 180 days after August 8, 2005.

(b) Plan requirements

The plan shall include—

(1) a description of the life cycle cost analysis used to determine the cost-effectiveness of proposed energy efficiency projects;

(2) a schedule of energy surveys to ensure complete surveys of all congressional buildings every 5 years to determine the cost and payback period of energy and water conservation measures;

(3) a strategy for installation of life cycle cost-effective energy and water conservation measures;

(4) the results of a study of the costs and benefits of installation of submetering in congressional buildings; and

(5) information packages and “how-to” guides for each Member and employing authority of Congress that detail simple, cost-effective methods to save energy and taxpayer dollars in the workplace.

(c) Annual report

The Architect of the Capitol shall submit to Congress annually a report on congressional energy management and conservation programs required under this section that describes in detail—

(1) energy expenditures and savings estimates for each facility;

(2) energy management and conservation projects; and

(3) future priorities to ensure compliance with this section.

(Pub. L. 95-619, title V, §552, as added Pub. L. 109-58, title I, §101(a), Aug. 8, 2005, 119 Stat. 605.)

§ 8259b. Federal procurement of energy efficient products

(a) Definitions

In this section:

(1) Agency

The term “agency” has the meaning given that term in section 7902(a) of title 5.

(2) Energy Star product

The term “Energy Star product” means a product that is rated for energy efficiency under an Energy Star program.

(3) Energy Star program

The term “Energy Star program” means the program established by section 6294a of this title.

(4) FEMP designated product

The term “FEMP designated product” means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

(5) Product

The term “product” does not include any energy consuming product or system designed or procured for combat or combat-related missions.

(b) Procurement of energy efficient products

(1) Requirement

To meet the requirements of an agency for an energy consuming product, the head of the agency shall, except as provided in paragraph (2), procure—

- (A) an Energy Star product; or
- (B) a FEMP designated product.

(2) Exceptions

The head of an agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the agency finds in writing that—

- (A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or
- (B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the agency.

(3) Procurement planning

The head of an agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria

used for rating Energy Star products and for rating FEMP designated products.

(c) Listing of energy efficient products in Federal catalogs

Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer’s functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

(d) Specific products

(1) In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard not later than 120 days after August 8, 2005, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

(2) All Federal agencies are encouraged to take actions to maximize the efficiency of air conditioning and refrigeration equipment, including appropriate cleaning and maintenance, including the use of any system treatment or additive that will reduce the electricity consumed by air conditioning and refrigeration equipment. Any such treatment or additive must be—

(A) determined by the Secretary to be effective in increasing the efficiency of air conditioning and refrigeration equipment without having an adverse impact on air conditioning performance (including cooling capacity) or equipment useful life;

(B) determined by the Administrator of the Environmental Protection Agency to be environmentally safe; and

(C) shown to increase seasonal energy efficiency ratio (SEER) or energy efficiency ratio (EER) when tested by the National Institute of Standards and Technology according to Department of Energy test procedures without causing any adverse impact on the system, system components, the refrigerant or lubricant, or other materials in the system.

Results of testing described in subparagraph (C) shall be published in the Federal Register for public review and comment. For purposes of this section, a hardware device or primary refrigerant shall not be considered an additive.

(e) Regulations

Not later than 180 days after August 8, 2005, the Secretary shall issue guidelines to carry out this section.

(Pub. L. 95-619, title V, §553, as added Pub. L. 109-58, title I, §104(a), Aug. 8, 2005, 119 Stat. 609.)

§§ 8260, 8261. Omitted

CODIFICATION

Sections 8260 and 8261 were omitted in the general amendment of this part by Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3185.

Section 8260, Pub. L. 95-619, title V, § 550, Nov. 9, 1978, 92 Stat. 3280, directed each Federal agency to periodically furnish Secretary with full and complete information on its activities under this part, and directed Secretary to annually submit to Congress a comprehensive report on all activities under this part and on progress made toward achievement of objectives of this part.

Section 8261, Pub. L. 95-619, title V, § 551, Nov. 9, 1978, 92 Stat. 3280, authorized to be appropriated to Secretary not to exceed \$2,000,000 for fiscal year ending Sept. 30, 1979, to enable Secretary to perform analytical and administrative functions under this part.

§ 8262. Definitions

For purposes of this subtitle—¹

(1) the term “agency” means² has the meaning given such term in section 551(1) of title 5, except that such term does not include the United States Postal Service;

(2) the term “facility energy supervisor” means the employee with responsibility for the daily operations of a Federal facility, including the management, installation, operation, and maintenance of energy systems in Federal facilities which may include more than one building;

(3) the term “trained energy manager” means a person who has demonstrated proficiency, or who has completed a course of study in the areas of fundamentals of building energy systems, building energy codes and applicable professional standards, energy accounting and analysis, life-cycle cost methodology, fuel supply and pricing, and instrumentation for energy surveys and audits;

(4) the term “Task Force” means the Interagency Energy Management Task Force established under section 8257 of this title; and

(5) the term “energy conservation measures” has the meaning given such term in section 8259(4) of this title.

(Pub. L. 102-486, title I, § 151, Oct. 24, 1992, 106 Stat. 2843.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle F (§§ 151-168) of title I of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262a. Report by General Services Administration

Not later than one year after October 24, 1992, and annually thereafter, the Administrator of

General Services shall report to the Committee on Governmental Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives on the activities of the General Services Administration conducted pursuant to this subtitle.¹

(Pub. L. 102-486, title I, § 154, Oct. 24, 1992, 106 Stat. 2852.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle F (§§ 151-168) of title I of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2.

§ 8262b. Intergovernmental energy management planning and coordination**(a) Conference workshops**

The Administrator of General Services, in consultation with the Secretary and the Task Force, shall hold regular, biennial conference workshops in each of the 10 standard Federal regions on energy management, conservation, efficiency, and planning strategy. The Adminis-

¹ See References in Text note below.

² So in original. The word “means” probably should not appear.

¹ See References in Text note below.

trator shall work and consult with the Department of Energy and other Federal agencies to plan for particular regional conferences. The Administrator shall invite Department of Energy, State, local, tribal, and county public officials who have responsibilities for energy management or may have an interest in such conferences and shall seek the input of, and be responsive to, the views of such officials in the planning and organization of such workshops.

(b) Focus of workshops

Such workshops and conferences shall focus on the following (but may include other topics):

- (1) Developing strategies among Federal, State, tribal, and local governments to coordinate energy management policies and to maximize available intergovernmental energy management resources within the region regarding the use of governmental facilities and buildings.
- (2) The design, construction, maintenance, and retrofitting of governmental facilities to incorporate energy efficient techniques.
- (3) Procurement and use of energy efficient products.
- (4) Dissemination of energy information on innovative programs, technologies, and methods which have proven successful in government.
- (5) Technical assistance to design and incorporate effective energy management strategies.

(c) Establishment of workshop timetable

As a part of the first report to be submitted pursuant to section 8262a of this title, the Administrator shall set forth the schedule for the regional energy management workshops to be conducted under this section. Not less than five such workshops shall be held by September 30, 1993, and at least one such workshop shall be held in each of the 10 Federal regions every two years beginning on September 30, 1993.

(Pub. L. 102-486, title I, § 156, Oct. 24, 1992, 106 Stat. 2855.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262c. Federal agency energy management training

(a) Energy management training

(1) Each executive department described under section 101 of title 5, the Environmental Protection Agency, the National Aeronautics and Space Administration, the General Services Administration, and the United States Postal Service shall establish and maintain a program to ensure that facility energy managers are trained energy managers. Such programs shall be managed—

- (A) by the department or agency representative on the Task Force; or
- (B) if a department or agency is not represented on the Task Force, by the designee of the head of such department or agency.

(2) Departments and agencies described in paragraph (1) shall encourage appropriate em-

ployees to participate in energy manager training courses. Employees may enroll in courses of study in the areas described in section 8262(3) of this title including, but not limited to, courses offered by—

- (A) private or public educational institutions;
- (B) Federal agencies; or
- (C) professional associations.

(b) Report to Task Force

(1) Each department and agency described in subsection (a)(1) of this section shall, not later than 60 days following October 24, 1992, report to the Task Force the following information:

- (A) Those individuals employed by such department or agency on October 24, 1992, who qualify as trained energy managers.
- (B) The General Schedule (GS) or grade level at which each of the individuals described in subparagraph (A) is employed.
- (C) The facility or facilities for which such individuals are responsible or otherwise stationed.

(2) The Secretary shall provide a summary of the reports described in paragraph (1) to the Congress as part of the first report submitted under section 8258 of this title after October 24, 1992.

(c) Requirements at Federal facilities

(1) Not later than one year after October 24, 1992, the departments and agencies described under subsection (a)(1) of this section shall upgrade their energy management capabilities by—

- (A) designating facility energy supervisors;
- (B) encouraging facility energy supervisors to become trained energy managers; and
- (C) increasing the overall number of trained energy managers within such department or agency to a sufficient level to ensure effective implementation of this Act.

(2) Departments and agencies described in subsection (a)(1) of this section may hire trained energy managers to be facility energy supervisors. Trained energy managers, including those who are facility supervisors as well as other trained personnel, shall focus their efforts on improving energy efficiency in the following facilities—

- (A) department or agency facilities identified as most costly to operate or most energy inefficient; or
- (B) other facilities identified by the department or agency head as having significant energy savings potential.

(d) Annual report to Secretary and Congress

Each department and agency listed in subsection (a)(1) of this section shall report to the Secretary on the status and implementation of the requirements of this section. The Secretary shall include a summary of each such report in the annual report to Congress as required under section 8258(b) of this title.

(Pub. L. 102-486, title I, § 157, Oct. 24, 1992, 106 Stat. 2856.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(1)(B), is set out under section 5332 of Title 5, Government Organization and Employees.

This Act, referred to in subsec. (c)(1)(C), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262d. Energy audit teams

(a) Establishment

The Secretary shall assemble from existing personnel with appropriate expertise, and with particular utilization of the national laboratories, and make available to all Federal agencies, one or more energy audit teams which shall be equipped with instruments and other advanced equipment needed to perform energy audits of Federal facilities.

(b) Monitoring programs

The Secretary shall also assist in establishing, at each site that has utilized an energy audit team, a program for monitoring the implementation of energy efficiency improvements based upon energy audit team recommendations, and for recording the operating history of such improvements.

(Pub. L. 102-486, title I, § 158, Oct. 24, 1992, 106 Stat. 2857.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262e. Federal energy cost accounting and management

(a) Guidelines

Not later than 120 days after October 24, 1992, the Director of the Office of Management and Budget, in cooperation with the Secretary, the Administrator of General Services, and the Secretary of Defense, shall establish guidelines to be employed by each Federal agency to assess accurate energy consumption for all buildings or facilities which the agency owns, operates, manages or leases, where the Government pays utilities separate from the lease and the Government operates the leased space. Such guidelines are to be used in reports required under section 8258 of this title. Each agency shall implement such guidelines no later than 120 days after their establishment. Each facility energy manager shall maintain energy consumption and energy cost records for review by the Inspector General, the Congress, and the general public.

(b) Contents of guidelines

Such guidelines shall include the establishment of a monitoring system to determine—

- (1) which facilities are the most costly to operate when measured on an energy consumption per square foot basis or other relevant analytical basis;
- (2) unusual or abnormal changes in energy consumption; and
- (3) the accuracy of utility charges for electric and gas consumption.

(c) Federally leased space energy reporting requirement

The Administrator of General Services shall include, in each report submitted under section 8262a of this title, the estimated energy cost of leased buildings or space in which the Federal Government does not directly pay the utility bills.

(Pub. L. 102-486, title I, § 159, Oct. 24, 1992, 106 Stat. 2857.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262f. Inspector General review and agency accountability

(a) Audit survey

Not later than 120 days after October 24, 1992, each Inspector General created to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.), and the Chief Postal Inspector of the United States Postal Service, in accordance with section 8E(f)(1) as established by section 8E(a)(2) of the Inspector General Act Amendments of 1988 (Public Law 100-504) shall—

(1) identify agency compliance activities to meet the requirements of section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) and any other matters relevant to implementing the goals of such Act; and

(2) determine if the agency has the internal accounting mechanisms necessary to assess the accuracy and reliability of energy consumption and energy cost figures required under such section.

(b) President's Council on Integrity and Efficiency report to Congress

Not later than 150 days after October 24, 1992, the President's Council on Integrity and Efficiency shall submit a report to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, on the review conducted by the Inspector General of each agency under this section.

(c) Inspector General review

Each Inspector General established under section 2 of the Inspector General Act of 1978 (5 U.S.C. App.) is encouraged to conduct periodic reviews of agency compliance with part 3 of title V of the National Energy Conservation Policy Act [42 U.S.C. 8251 et seq.], the provisions of this subtitle,¹ and other laws relating to energy consumption. Such reviews shall not be inconsistent with the performance of the required duties of the Inspector General's office.

(Pub. L. 102-486, title I, § 160, Oct. 24, 1992, 106 Stat. 2858.)

¹ See References in Text note below.

REFERENCES IN TEXT

Sections 2 and 11(2) of the Inspector General Act of 1978, referred to in subsecs. (a) and (c), are sections 2 and 11(2) of Pub. L. 95-452, which are set out in the Appendix to Title 5, Government Organization and Employees.

Section 8E as established by section 8E(a)(2) of the Inspector General Act Amendments of 1988, referred to in subsec. (a), probably means section 8E of the Inspector General Act of 1978, Pub. L. 95-452, as added by Pub. L. 100-504, title I, §104(a), Oct. 18, 1988, 102 Stat. 2522. Section 8E of the Inspector General Act of 1978 was successively renumbered section 8F by Pub. L. 103-82, title II, §202(g)(1), Sept. 21, 1993, 107 Stat. 889, then section 8G by Pub. L. 103-204, §23(a)(3), Dec. 17, 1993, 107 Stat. 2408, and is set out in the Appendix to Title 5.

The National Energy Conservation Policy Act, referred to in subsecs. (a)(1) and (c), is Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, as amended. Part 3 of title V of the Act is classified generally to part B (§8251 et seq.) of subchapter III of chapter 91 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

This subtitle, referred to in subsec. (c), is subtitle F (§§151-168) of title I of Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2843, which enacted this section and sections 8258a, 8258b, 8262a to 8262k of this title, amended sections 8252 to 8256, 8258, 8259, 8287, and 8287c of this title and section 490 of former Title 40, Public Buildings, Property, and Works, enacted provisions set out as notes under section 8262h of this title and former section 1815 of Title 2, The Congress, and repealed provisions set out as a note under section 8253 of this title. For complete classification of subtitle F to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2.

§ 8262g. Procurement and identification of energy efficient products

(a) Procurement

The Administrator of General Services, the Secretary of Defense, and the Director of the

Defense Logistics Agency, each shall undertake a program to include energy efficient products in carrying out their procurement and supply functions.

(b) Identification program

The Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, in consultation with the Secretary of Energy, each shall implement, in conjunction with carrying out their procurement and supply functions, a program to identify and designate those energy efficient products that offer significant potential savings, using, to the extent practicable, the life cycle cost methods and procedures developed under section 8254 of this title. The Secretary of Energy shall, to the extent necessary to carry out this section and after consultation with the aforementioned agency heads, provide estimates of the degree of relative energy efficiency of products.

(c) Guidelines

The Administrator for Federal Procurement Policy, in consultation with the Administrator of General Services, the Secretary of Energy, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall issue guidelines to encourage the acquisition and use by all Federal agencies of products identified pursuant to this section. The Secretary of Defense and the Director of the Defense Logistics Agency shall consider, and place emphasis on, the acquisition of such products as part of the Agency's ongoing review of military specifications.

(d) Report to Congress

Not later than December 31 of 1993 and thereafter as part of the report required under section 8258(b) of this title, the Secretary of Energy, in consultation with the Administrator for Federal Procurement Policy, the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency, shall report on the progress, status, activities, and results of the programs under subsections (a), (b), and (c) of this section. The report shall include—

(1) the types and functions of each product identified under subsection (b) of this section, and efforts undertaken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to encourage the acquisition and use of such products;

(2) the actions taken by the Administrator of General Services, the Secretary of Defense, and the Director of the Defense Logistics Agency to identify products under subsection (b) of this section, the barriers which inhibit implementation of identification of such products, and recommendations for legislative action, if necessary;

(3) progress on the development and issuance of guidelines under subsection (c) of this section;

(4) an indication of whether energy cost savings technologies identified by the Advanced Building Technology Council, under section 1701j-2(h) of title 12, have been used in the identification of products under subsection (b) of this section;

(5) an estimate of the potential cost savings to the Federal Government from acquiring products identified under subsection (b) of this section with respect to which energy is a significant component of life cycle cost, based on the quantities of such products that could be utilized throughout the Government; and

(6) the actual quantities acquired of products described in paragraph (5).

(Pub. L. 102-486, title I, §161, Oct. 24, 1992, 106 Stat. 2858; Pub. L. 104-66, title I, §1052(c), Dec. 21, 1995, 109 Stat. 718.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 substituted “thereafter as part of the report required under section 8258(b) of this title,” for “of each year thereafter,” in introductory provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the 12th item on page 85 identifies a reporting provision which, as subsequently amended, is contained in subsec. (d) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

EXECUTIVE ORDER NO. 12845

Ex. Ord. No. 12845, Apr. 21, 1993, 58 F.R. 21887, which required Federal agencies to procure computer equipment that met EPA Energy Star requirements for energy efficiency, was revoked by Ex. Ord. No. 13123, §604, June 3, 1999, 64 F.R. 30859, set out as a note under section 8251 of this title.

§ 8262h. United States Postal Service energy regulations

(a) In general

The Postmaster General shall issue regulations to ensure the reliable and accurate accounting of energy consumption costs for all buildings or facilities which it owns, leases, operates, or manages. Such regulations shall—

- (1) establish a monitoring system to determine which facilities are the most costly to operate on an energy consumption per square foot basis or other relevant analytical basis;
- (2) identify unusual or abnormal changes in energy consumption; and
- (3) check the accuracy of utility charges for electricity and gas consumption.

(b) Identification of energy efficiency products

The Postmaster General shall actively undertake a program to identify and procure energy efficiency products for use in its facilities. In carrying out this subsection, the Postmaster General shall, to the maximum extent practicable, incorporate energy efficient information available on Federal Supply Schedules maintained by the General Services Administration and the Defense Logistics Agency.

(Pub. L. 102-486, title I, §163, Oct. 24, 1992, 106 Stat. 2860.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

UNITED STATES POSTAL SERVICE BUILDING ENERGY SURVEY AND REPORT

Section 164 of Pub. L. 102-486 directed Postmaster General to conduct an energy survey, as defined in 42 U.S.C. 8259(5), for purposes of determining maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by United States Postal Service in different areas of the country, making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar United States Postal Service buildings, and identifying barriers which may prevent the United States Postal Service from complying with energy management goals, and further directed Postmaster General to transmit to Congress within 180 days after Oct. 24, 1992, a plan for implementing this survey, and to report to Congress on the findings and conclusions of such survey as soon as practicable after its completion.

§ 8262i. United States Postal Service energy management report

Not later than one year after October 24, 1992, and not later than January 1 of each year thereafter, the Postmaster General shall submit a report to the Committee on Governmental Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce and the Committee on Post Office and Civil Service of the House of Representatives on the United States Postal Service's building management program as it relates to energy efficiency. The report shall include, but not be limited to—

- (1) a description of actions taken to reduce energy consumption;
- (2) future plans to reduce energy consumption;
- (3) an assessment of the success of the energy conservation program;
- (4) a statement of energy costs incurred in operating and maintaining all United States Postal Service facilities; and
- (5) the status of the energy efficient procurement program established under section 8262h of this title.

(Pub. L. 102-486, title I, §165, Oct. 24, 1992, 106 Stat. 2861.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Com-

mittee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND
CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. References to Committee on Post Office and Civil Service treated as referring to Committee on Government Reform and Oversight of House of Representatives, see section 1(b) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

**§ 8262j. Energy management requirements for
United States Postal Service**

**(a) Energy management requirements for postal
facilities**

(1) The Postmaster General shall, to the maximum extent practicable, ensure that each United States Postal Service facility meets the energy management requirements for Federal buildings and agencies specified in section 8253 of this title.

(2) The Postmaster General may exclude from the requirements of such section any facility or collection of facilities, and the associated energy consumption and gross square footage if the Postmaster General finds that compliance with the requirements of such section would be impracticable. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such facility or collection of facilities, the type and amount of energy consumed, or the technical feasibility of making the desired changes. The Postmaster General shall identify and list in the report required under section 8262i of this title the facilities designated by it for such exclusion.

(b) Implementation steps

In carrying subsection (a) of this section, the Postmaster General shall—

(1) not later than 1 year after October 24, 1992, prepare or update, as appropriate, a plan (which may be submitted as part of the first report submitted under section 8262i of this title)—

(A) describing how this section will be implemented;

(B) designating personnel primarily responsible for achieving the requirements of this section; and

(C) identifying high priority projects;

(2) perform energy surveys of United States Postal Service facilities as necessary to achieve the requirements of this section;

(3) install those energy conservation measures that will attain the requirements of this section in a cost-effective manner as defined in section 8254 of this title; and

(4) ensure that the operation and maintenance procedures applied under this section are continued.

(Pub. L. 102-486, title I, §166, Oct. 24, 1992, 106 Stat. 2861.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8262k. Government contract incentives

(a) Establishment of criteria

Each agency, in consultation with the Federal Acquisition Regulatory Council, shall establish criteria for the improvement of energy efficiency in Federal facilities operated by Federal Government contractors or subcontractors.

(b) Purpose of criteria

The criteria established under subsection (a) of this section shall be used to encourage Federal contractors, and their subcontractors, which manage and operate federally-owned facilities, to adopt and utilize energy conservation measures designed to reduce energy costs in Government-owned and contractor-operated facilities and which are ultimately borne by the Federal Government.

(Pub. L. 102-486, title I, §167, Oct. 24, 1992, 106 Stat. 2862.)

CODIFICATION

Section was enacted as part of the Energy Policy Act of 1992, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

PART C—FEDERAL PHOTOVOLTAIC UTILIZATION

§ 8271. “Federal facility” and “Secretary” defined

For purposes of this part—

(1) The term “Federal facility” means any building, structure, or fixture or part thereof which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation. Such term also applies to facilities related to programs administered by Federal agencies.

(2) The term “Secretary” means the Secretary of Energy.

(Pub. L. 95-619, title V, §562, Nov. 9, 1978, 92 Stat. 3280; Pub. L. 96-294, title IV, §407(1), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Par. (1). Pub. L. 96-294 inserted applicability to facilities related to programs administered by Federal agencies.

SHORT TITLE

For short title of this part as the “Federal Photovoltaic Utilization Act”, see section 561 of Pub. L. 95-619, set out as a note under section 8201 of this title.

§ 8272. Photovoltaic energy program

There is hereby established a photovoltaic energy commercialization program for the accelerated procurement and installation of photovoltaic solar electric systems for electric production in Federal facilities.

(Pub. L. 95-619, title V, §563, Nov. 9, 1978, 92 Stat. 3280.)

§ 8273. Purpose of program

The purpose of the program established by section 8272 of this title is to—

- (1) accelerate the growth of a commercially viable and competitive industry to make photovoltaic solar electric systems available to the general public as an option in order to reduce national consumption of fossil fuel;
- (2) reduce fossil fuel costs to the Federal Government;
- (3) stimulate the general use within the Federal Government of methods for the minimization of life cycle costs; and
- (4) develop performance data on the program established by section 8272 of this title.

(Pub. L. 95-619, title V, § 564, Nov. 9, 1978, 92 Stat. 3280.)

§ 8274. Acquisition of systems

The program established by section 8272 of this title shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability by the Secretary for their use by Federal agencies, and for the acquisition of such systems and associated capability by Federal agencies for their own use in cases where the authority to make such acquisition has been delegated to the agency involved by the Secretary. The acquisition of photovoltaic solar electric systems shall be at an annual level substantial enough to allow use of low-cost production techniques by suppliers of such systems. The Secretary (or other Federal agency acting under delegation from the Secretary) is authorized to make such acquisitions through the use of multiyear contracts. Authority under this part to enter into acquisition contracts shall be only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95-619, title V, § 565, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96-294, title IV, § 407(2)(A), (B), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Pub. L. 96-294 inserted provisions relating to acquisition of systems and associated capability by Federal agencies and inserted “(or other Federal agency acting under delegation from the Secretary)”.

§ 8275. Administration

The Secretary shall administer the program established under section 8272 of this title and shall—

- (1) consult with the Secretary of Defense to insure that the installation and purchase of photovoltaic solar electric systems pursuant to this part shall not interfere with defense-related activities;
- (2) prescribe such requirements as may be appropriate to monitor and assess the performance and operation of photovoltaic electric systems installed pursuant to this part; and
- (3) report annually to the Congress on the status of the program.

Notwithstanding any other provision of law, the Secretary shall not be subject to the requirements of section 553 of title 5, in the performance of his functions under this part.

(Pub. L. 95-619, title V, § 566, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96-294, title IV, § 407(3), (4), June 30, 1980, 94 Stat. 717, 718.)

AMENDMENTS

1980—Pub. L. 96-294 inserted provisions relating to inapplicability of section 553 of title 5 and substituted “requirements” for “rules and regulations” in par. (2).

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of the reporting provision in par. (3) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 3rd item on page 87 of House Document No. 103-7.

§ 8276. System evaluation and purchase program**(a) Program**

The Secretary shall establish, within 60 days after November 9, 1978, a photovoltaic systems evaluation and purchase program to provide such systems as are required by the Federal agencies to carry out this part. In acquiring photovoltaic solar electric systems under this part, the Secretary (or other Federal agency acting under delegation from the Secretary) shall insure that such systems reflect to the maximum extent practicable the most advanced and reliable technologies and shall schedule purchases in a manner which will stimulate the early development of a permanent low-cost private photovoltaic production capability in the United States, and to stimulate the private sector market for photovoltaic power systems. The Secretary and other Federal agencies acting under delegation from the Secretary shall, subject to the availability of appropriated funds, procure not more than 30 megawatts of photovoltaic solar electric systems during fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(b) Other procurement

Nothing in this part shall preclude any Federal agency from directly procuring a photovoltaic solar electric system (in lieu of obtaining one under the program under subsection (a) of this section), except that any such Federal agency shall consult with the Secretary before procuring such a system.

(Pub. L. 95-619, title V, § 567, Nov. 9, 1978, 92 Stat. 3281; Pub. L. 96-294, title IV, § 407(2)(C), (D), June 30, 1980, 94 Stat. 717.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-294 inserted provisions relating to Federal agencies acting under delegations from the Secretary.

§ 8277. Advisory committee**(a) Establishment**

There is hereby established an advisory committee to assist the Secretary in the establishment and conduct of the programs established under this part.

(b) Membership

Such committee shall be composed of the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of the National Aeronautics and Space Administra-

tion, the Administrator of the General Services Administration, the Secretary of Transportation, the Administrator of the Small Business Administration, the chairman of the Federal Trade Commission, the Postmaster General, and such other persons as the Secretary deems necessary. The Secretary shall appoint such other nongovernmental persons to the extent necessary to assure that the membership of the committee will be fairly balanced in terms of the point of view represented and the functions to be performed by the committee.

(c) Termination

The advisory committee shall terminate October 1, 1981.

(Pub. L. 95-619, title V, § 568, Nov. 9, 1978, 92 Stat. 3281.)

§ 8278. Authorization of appropriations

For the purposes of this part, there is authorized to be appropriated to the Secretary not to exceed \$98,000,000 for the period beginning October 1, 1978, and ending September 30, 1981.

(Pub. L. 95-619, title V, § 569, Nov. 9, 1978, 92 Stat. 3282.)

SUBCHAPTER IV—ENERGY CONSERVATION FOR COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

PART A—GENERAL PROVISIONS

§§ 8281 to 8281b. Repealed. Pub. L. 99-412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8281, Pub. L. 95-619, title VII, § 710, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 752, provided that definitions in section 8211 of this title apply to this subchapter and defined additional terms.

Section 8281a, Pub. L. 95-619, title VII, § 711, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 754, provided that this subchapter apply to any public utility for which coverage is provided under section 8212 of this title.

Section 8281b, Pub. L. 95-619, title VII, § 712, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 754, related to rules of the Secretary for submission and approval of plans.

DEMONSTRATION PROJECTS FOR ENERGY EFFICIENCY IN COMMERCIAL BUILDINGS

Pub. L. 99-412, title II, § 202, Aug. 28, 1986, 100 Stat. 943, provided that: "The Secretary of Energy shall, using funds appropriated for energy conservation activities of the Department of Energy, carry out demonstration projects by sharing the cost of the construction and development by nongovernmental entities of facilities which demonstrate innovative technologies for utility applications that increase energy efficiency in commercial buildings."

PART B—ENERGY CONSERVATION PLANS

§§ 8282 to 8282b. Repealed. Pub. L. 99-412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8282, Pub. L. 95-619, title VII, § 721, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 754, related to procedures for submission and approval of State energy conservation plans for commercial buildings and multifamily dwellings.

Section 8282a, Pub. L. 95-619, title VII, § 722, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 755, related to requirements for State plans for regulated utilities.

Section 8282b, Pub. L. 95-619, title VII, § 723, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 756, related to plan requirements for nonregulated utilities and building heating suppliers.

AUTHORITY TO CONTINUE CERTAIN STATE ENERGY CONSERVATION PLANS

Pub. L. 99-412, title II, § 201(c), Aug. 28, 1986, 100 Stat. 943, provided that: "Notwithstanding subsection (a) [repealing this subchapter], any State energy conservation plan for commercial buildings and multifamily dwellings approved under section 721 of the National Energy Conservation Policy Act [42 U.S.C. 8282] before August 1, 1984, may, with respect to regulated utilities, continue in effect until January 1, 1990."

PART C—UTILITY PROGRAMS

§§ 8283, 8283a. Repealed. Pub. L. 99-412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section 8283, Pub. L. 95-619, title VII, § 731, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 756, related to general requirements for utility programs and requirements concerning accounting and payment of costs.

Section 8283a, Pub. L. 95-619, title VII, § 732, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 757, related to requirements for building heating supplier programs and waiver of such requirements.

PART D—FEDERAL IMPLEMENTATION

§ 8284. Repealed. Pub. L. 99-412, title II, § 201(a), Aug. 28, 1986, 100 Stat. 943

Section, Pub. L. 95-619, title VII, § 741, as added Pub. L. 96-294, title V, § 565, June 30, 1980, 94 Stat. 757, related to Federal standby authority to promulgate plans.

SUBCHAPTER V—ENERGY AUDITOR TRAINING AND CERTIFICATION

CODIFICATION

This subchapter was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8285. Purpose

It is the purpose of this subchapter to encourage the training and certification of individuals to conduct energy audits for residential and commercial buildings in order to serve the various private and public needs of the Nation for energy audits.

(Pub. L. 96-294, title V, § 581, June 30, 1980, 94 Stat. 760.)

§ 8285a. Definitions

For the purposes of this subchapter—

(1) the term "Governor" means the chief executive officer of each State, including the Mayor of the District of Columbia;

(2) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands;

(3) the term "energy audit" means an inspection as described in section 8216(b)(1)(A)¹ of this title, or an energy audit as defined in section 8281(b)(7)¹ of this title, which in addition may provide information on the utilization

¹ See References in Text note below.

tion of renewable resources and may make energy-related improvements in the building; and

(4) the term “Secretary” means the Secretary of Energy.

(Pub. L. 96-294, title V, §582, June 30, 1980, 94 Stat. 761.)

REFERENCES IN TEXT

Section 8216 of this title, referred to in par. (3), was omitted from the Code pursuant to section 8229 of this title, which terminated authority under that section June 30, 1989.

Section 8281 of this title, referred to in par. (3), was repealed by Pub. L. 99-412, title II, §201(a), Aug. 28, 1986, 100 Stat. 943.

§ 8285b. Grants

(a) The Secretary may make grants to any Governor of a State for the training and certification of individuals to conduct energy audits.

(b) Before making a grant under subsection (a) of this section to a Governor, the Secretary must receive from the Governor an application containing—

(A) any information which the Secretary deems is necessary to carry out this subchapter; and

(B) an assurance that the grant will supplement and not supplant other funds available for such training and certification and will be used to increase the total amount of funds available for such training and certification.

(c)(1) Before making any grant under subsection (a) of this section the Secretary shall establish minimum standards for the training and certification of individuals to conduct energy audits.

(2) The Secretary shall require each Governor receiving any grant under this subchapter to agree to meet the standards established pursuant to paragraph (1) in any training and certification conducted using funds provided under this subchapter.

(Pub. L. 96-294, title V, §583, June 30, 1980, 94 Stat. 761.)

§ 8285c. Authorization of appropriations

(a) To carry out this subchapter there is authorized to be appropriated the sum of \$10,000,000 for the fiscal year ending on September 30, 1981, and the sum of \$15,000,000 for the fiscal year ending on September 30, 1982.

(b) Any funds appropriated under the authorization contained in this section shall remain available until expended.

(Pub. L. 96-294, title V, §584, June 30, 1980, 94 Stat. 761.)

SUBCHAPTER VI—COORDINATION OF FEDERAL ENERGY CONSERVATION FACTORS AND DATA

CODIFICATION

This subchapter was enacted as part of the Energy Security Act, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

§ 8286. Consensus on factors and data for energy conservation standards

The Secretary of Energy shall assure that within 6 months after June 30, 1980, the Sec-

retary of Energy, the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Secretary of Health and Human Services, the Secretary of Defense, the Administrator of the General Services Administration, and the head of any other agency responsible for developing energy conservation standards for new or existing residential, commercial, or agricultural buildings shall reach a consensus regarding factors and data used to develop such standards. This consensus shall apply to, but not be limited to—

- (1) fuel price projections;
- (2) discount rates;
- (3) inflation rates;
- (4) climatic conditions and zones; and
- (5) the cost and energy saving characteristics of construction materials.

(Pub. L. 96-294, title V, §595, June 30, 1980, 94 Stat. 762.)

§ 8286a. Use of factors and data

Factors and data consented to pursuant to section 8286 of this title may be revised and agreed to by a consensus of the heads of the various Federal agencies involved. Such factors and data shall be used by all Federal agencies in establishing and revising various energy conservation standards used by such agencies, except that other factors and data may be used with respect to the standards applicable to any program if—

- (1) the other factors and data are approved by the Secretary of Energy solely on the basis that such other factors and data are critical to meet the unique needs of the program concerned;
- (2) using the consented to factors and data would cause a violation of an express provision of law; or
- (3) statutory requirements or responsibilities require a modification of the consented to factors and data.

(Pub. L. 96-294, title V, §596, June 30, 1980, 94 Stat. 762.)

§ 8286b. Omitted

CODIFICATION

Section, Pub. L. 96-294, title V, §597, June 30, 1980, 94 Stat. 762, which required the President (who delegated the duty to the Secretary of Energy by Memorandum of June 23, 1993, 58 F.R. 34519) to report annually to Congress on activities carried out under this subchapter and on other efforts to coordinate Federal energy conservation programs, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 15th item on page 19 of House Document No. 103-7.

SUBCHAPTER VII—ENERGY SAVINGS PERFORMANCE CONTRACTS

§ 8287. Authority to enter into contracts

(a) In general

(1) The head of a Federal agency may enter into contracts under this subchapter solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years.

Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the costs (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

(2)(A) Contracts under this subchapter shall be energy savings performance contracts and shall require an annual energy audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(B) Aggregate annual payments by an agency to both utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency would have paid for utilities without an energy savings performance contract (as estimated through the procedures developed pursuant to this section) during contract years. The contract shall provide for a guarantee of savings to the agency, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(C) Federal agencies may incur obligations pursuant to such contracts to finance energy conservation measures provided guaranteed savings exceed the debt service requirements.

(D) A Federal agency may enter into a multi-year contract under this subchapter for a period not to exceed 25 years, without funding of cancellation charges before cancellation, if—

(i) such contract was awarded in a competitive manner pursuant to subsection (b)(2) of this section, using procedures and methods established under this subchapter;

(ii) funds are available and adequate for payment of the costs of such contract for the first fiscal year;

(iii) 30 days before the award of any such contract that contains a clause setting forth a cancellation ceiling in excess of \$10,000,000, the head of such agency gives written notification of such proposed contract and of the proposed cancellation ceiling for such contract to the appropriate authorizing and appropriating committees of the Congress; and

(iv) such contract is governed by part 17.1 of the Federal Acquisition Regulation promulgated under section 421 of title 41 or the applicable rules promulgated under this subchapter.

(b) Implementation

(1)(A) The Secretary, with the concurrence of the Federal Acquisition Regulatory Council established under section 421(a) of title 41, not later than 180 days after October 24, 1992, shall, by rule, establish appropriate procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such procedures and

methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

(B) The procedures and methods established pursuant to subparagraph (A) shall be the procedures and contracting methods for selection, by an agency, of a contractor to provide energy savings performance services. Such procedures and methods shall provide for the calculation of energy savings based on sound engineering and financial practices.

(2) The procedures and methods established pursuant to paragraph (1)(A) shall—

(A) allow the Secretary to—

(i) request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information, from firms engaged in providing energy savings services; and

(ii) from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;

(B) require each agency to use the list prepared by the Secretary pursuant to subparagraph (A)(ii) unless the agency elects to develop an agency list of firms qualified to provide energy savings performance services using the same selection procedures and methods as are required of the Secretary in preparing such lists; and

(C) allow the head of each agency to—

(i) select firms from the list prepared pursuant to subparagraph (A)(ii) or the list prepared by the agency pursuant to subparagraph (B) to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;

(ii) select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;

(iii) permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that such agency has determined is qualified to provide such services under the procedures established pursuant to paragraph (1)(A), and require agency facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals; and

(iv) enter into an energy savings performance contract with a firm qualified under clause (iii), consistent with the procedures and methods established pursuant to paragraph (1)(A).

(3) A firm not designated as qualified to provide energy savings services under paragraph (2)(A)(i) or paragraph (2)(B) may request a review of such decision to be conducted in accordance with procedures to be developed by the

board of contract appeals of the General Services Administration.

(c) Sunset requirements

The authority to enter into new contracts under this section shall cease to be effective on October 1, 2016.

(Pub. L. 95–619, title VIII, § 801, as added Pub. L. 99–272, title VII, § 7201(a), Apr. 7, 1986, 100 Stat. 142; amended Pub. L. 102–486, title I, § 155(a), Oct. 24, 1992, 106 Stat. 2852; Pub. L. 104–106, div. E, title LVI, § 5607(e), Feb. 10, 1996, 110 Stat. 702; Pub. L. 104–316, title I, § 122(s), Oct. 19, 1996, 110 Stat. 3838; Pub. L. 105–388, § 4(a), Nov. 13, 1998, 112 Stat. 3477; Pub. L. 106–291, title III, § 335, Oct. 11, 2000, 114 Stat. 997; Pub. L. 106–469, title IV, § 401, Nov. 9, 2000, 114 Stat. 2037; Pub. L. 108–375, div. A, title X, § 1090(a), Oct. 28, 2004, 118 Stat. 2067; Pub. L. 109–58, title I, § 105(a), Aug. 8, 2005, 119 Stat. 611.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–58 substituted “2016” for “2006”.

2004—Subsec. (c). Pub. L. 108–375 substituted “2006” for “2003”.

2000—Subsec. (a)(2)(D)(iii). Pub. L. 106–291 and Pub. L. 106–469 amended cl. (iii) identically, substituting “\$10,000,000” for “\$750,000”.

1998—Subsec. (c). Pub. L. 105–388 substituted “on October 1, 2003” for “five years after the date procedures and methods are established under subsection (b) of this section”.

1996—Subsec. (b)(3). Pub. L. 104–106 struck out at end “Procedures developed by the board of contract appeals under this paragraph shall be substantially equivalent to procedures established under section 759(f) of title 40.”

Subsec. (c). Pub. L. 104–316 struck out par. (1) designation before “The authority to” and struck out par. (2) which required Comptroller General of the United States to report annually for five years on implementation of this section, including an assessment of various energy issues.

1992—Pub. L. 102–486 inserted subsec. (a) designation and heading, designated existing provisions as par. (1), and added par. (2) and subsecs. (b) and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

ARCHITECT OF THE CAPITOL AS AGENCY ELECTING TO DEVELOP LIST OF FIRMS QUALIFIED TO PROVIDE ENERGY SAVING SERVICES AND AS AGENCY HEAD SELECTING FROM LIST

Pub. L. 103–211, title III, § 402, Feb. 12, 1994, 108 Stat. 40, provided that: “The Architect of the Capitol shall be considered the agency for the purposes of the election in section 801(b)(2)(B) of the National Energy Conservation Policy Act [42 U.S.C. 8287(b)(2)(B)] and the head of the agency for purposes of subsection (b)(2)(C) of such section.”

REVIEW

Pub. L. 108–375, div. A, title X, § 1090(f), Oct. 28, 2004, 118 Stat. 2068, provided that: “Not later than 180 days after the date of the enactment of this Act [Oct. 28, 2004], the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verifica-

tion requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.”

EXTENSION OF AUTHORITY

Pub. L. 109–58, title I, § 105(b), Aug. 8, 2005, 119 Stat. 611, provided that: “Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Aug. 8, 2005], shall be considered to have been entered into under that section.”

Pub. L. 108–375, div. A, title X, § 1090(g), Oct. 28, 2004, 118 Stat. 2068, provided that: “Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Oct. 28, 2004], shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.”

ENERGY EFFICIENCY INCENTIVE

Pub. L. 100–456, div. A, title VII, § 736, Sept. 29, 1988, 102 Stat. 2006, as amended by Pub. L. 101–189, div. A, title III, § 331, Nov. 29, 1989, 103 Stat. 1417, provided that:

“(a) **ENERGY CONSERVATION INCENTIVE.**—In order to provide additional incentive for the Secretary of a military department to enter into contracts under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.), the Secretary may use the energy cost savings realized by the United States during the first five years under any such contract in the manner provided in subsection (b). The amount of savings available for use under subsection (b) shall be determined as provided in subsection (c) and shall remain available for obligation until expended.

“(b) **AUTHORIZED USES OF SAVINGS.**—The energy cost savings realized by the United States in each of the first five years under a contract may be used as follows:

“(1) One-half of the amount of such savings may be used for the acquisition of energy conserving measures for military installations, and such measures may be in addition to any such energy conserving measures acquired for military installations under contracts entered into under title VIII of the National Energy Conservation Policy Act.

“(2) One-half of the amount of such savings may be used for any morale, welfare, or recreation facility or service that is normally provided with appropriated funds, or for any minor military construction project (as defined in section 2805(a) of title 10, United States Code), that will enhance the quality of life of members of the Armed Forces at the military installation at which the energy cost savings were realized.

“(c) **DETERMINATION OF AMOUNT OF SAVINGS.**—Not more than 90 days after the end of each of the first five years during which energy savings measures have been in operation under a contract entered into by the Secretary of a military department under title VIII of the National Energy Conservation Policy Act, the Secretary of the military department concerned shall determine the amount of energy cost savings realized by the United States under the terms of the contract during that year by reason of the energy savings measures acquired and installed at that installation pursuant to that contract.”

§ 8287a. Payment of costs

Any amount paid by a Federal agency pursuant to any contract entered into under this subchapter may be paid only from funds appropriated or otherwise made available to the agen-

cy for fiscal year 1986 or any fiscal year thereafter for the payment of energy, water, or wastewater treatment expenses (and related operation and maintenance expenses).

(Pub. L. 95-619, title VIII, § 802, as added Pub. L. 99-272, title VII, § 7201(a), Apr. 7, 1986, 100 Stat. 142; amended Pub. L. 108-375, div. A, title X, § 1090(b), Oct. 28, 2004, 118 Stat. 2067.)

AMENDMENTS

2004—Pub. L. 108-375 inserted “, water, or wastewater treatment” after “payment of energy”.

§ 8287b. Reports

Each Federal agency shall periodically furnish the Secretary of Energy with full and complete information on its activities under this subchapter, and the Secretary shall include in the report submitted to Congress under section 8260¹ of this title a description of the progress made by each Federal agency in—

- (1) including the authority provided by this subchapter in its contracting practices; and
- (2) achieving energy savings under contracts entered into under this subchapter.

(Pub. L. 95-619, title VIII, § 803, as added Pub. L. 99-272, title VII, § 7201(a), Apr. 7, 1986, 100 Stat. 142.)

REFERENCES IN TEXT

Section 8260 of this title, referred to in text, was omitted in the general revision of part B (§ 8251 et seq.) of subchapter III of this chapter by Pub. L. 100-615, § 2(a), Nov. 5, 1988, 102 Stat. 3185.

§ 8287c. Definitions

For purposes of this subchapter, the following definitions apply:

- (1) The term “Federal agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.
- (2) The term “energy savings” means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—
 - (A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;
 - (B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or
 - (C) the increased efficient use of existing water sources in either interior or exterior applications.
- (3) The terms “energy savings contract” and “energy savings performance contract” mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or

series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40), be in compliance with the prospectus requirements and procedures of section 3307 of title 40.

(4) The term “energy or water conservation measure” means—

- (A) an energy conservation measure, as defined in section 8259 of this title; or
- (B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.

(Pub. L. 95-619, title VIII, § 804, as added Pub. L. 99-272, title VII, § 7201(a), Apr. 7, 1986, 100 Stat. 143; amended Pub. L. 102-486, title I, § 155(b), Oct. 24, 1992, 106 Stat. 2855; Pub. L. 105-388, § 4(b), Nov. 13, 1998, 112 Stat. 3477; Pub. L. 108-375, div. A, title X, § 1090(c)–(e), Oct. 28, 2004, 118 Stat. 2067.)

AMENDMENTS

2004—Par. (2). Pub. L. 108-375, § 1090(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘energy savings’ means a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

- “(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or
- “(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.”

Par. (3). Pub. L. 108-375, § 1090(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The terms ‘energy savings contract’ and ‘energy savings performance contract’ mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

- “(A) may provide for appropriate software licensing agreements; and
- “(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).”

Par. (4). Pub. L. 108-375, § 1090(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The term ‘energy conservation measures’ has the meaning given such term in section 8259(4) of this title.”

1998—Par. (1). Pub. L. 105-388 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘Federal agency’ means an agency defined in section 551(1) of title 5.”

1992—Pub. L. 102-486, § 155(b)(1), substituted “subchapter, the following definitions apply:” for “subchapter—” in introductory provisions

Par. (1). Pub. L. 102-486, § 155(b)(2), substituted “The” for “the” and a period for “, and” at end.

Par. (2). Pub. L. 102-486, § 155(b)(3), substituted “The term” for “the term”.

Pars. (3), (4). Pub. L. 102-486, § 155(b)(4), added pars. (3) and (4).

¹ See References in Text note below.

§ 8287d. Assistance to Federal agencies in achieving energy efficiency in Federal facilities and operations

The Secretary in fiscal year 1999 and thereafter, shall continue the process begun in fiscal year 1998 of accepting funds from other Federal agencies in return for assisting agencies in achieving energy efficiency in Federal facilities and operations by the use of privately financed, energy savings performance contracts and other private financing mechanisms. The funds may be provided after agencies begin to realize energy cost savings; may be retained by the Secretary until expended; and may be used only for the purpose of assisting Federal agencies in achieving greater efficiency, water conservation and use of renewable energy by means of privately financed mechanisms, including energy savings performance contracts and utility incentive programs. These recovered funds will continue to be used to administer even greater energy efficiency, water conservation and use of renewable energy by means of privately financed mechanisms such as utility efficiency service contracts and energy savings performance contracts. The recoverable funds will be used for all necessary program expenses, including contractor support and resources needed, to achieve overall Federal energy management program objectives for greater energy savings. Any such privately financed contracts shall meet the provisions of the Energy Policy Act of 1992, Public Law 102-486 regarding energy savings performance contracts and utility incentive programs.

(Pub. L. 105-277, div. A, §101(e) [title II], Oct. 21, 1998, 112 Stat. 2681-231, 2681-278.)

REFERENCES IN TEXT

The Energy Policy Act of 1992, referred to in text, is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of this title and Tables.

CODIFICATION

Section was enacted as part of Department of the Interior and Related Agencies Appropriations Act, 1999, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the National Energy Conservation Policy Act which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105-83, title II, Nov. 14, 1997, 111 Stat. 1582.

CHAPTER 92—POWERPLANT AND INDUSTRIAL FUEL USE

SUBCHAPTER I—GENERAL PROVISIONS

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| Sec.
8301. | Findings; statement of purposes.
(a) Findings.
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| 8302. | Definitions.
(a) Generally.
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SUBCHAPTER II—NEW FACILITIES

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| 8311. | Coal capability of new electric powerplants; certification of compliance. |
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Sec.

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| (a) | General prohibition. |
| (b) | Capability to use coal or alternate fuel. |
| (c) | Applicability to base load powerplants. |
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8312.

Repealed.

PART B—EXEMPTIONS

8321.

Temporary exemptions.

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| (a) | General exemption due to lack of alternate fuel supply, site limitations, or environmental requirements. |
| (b) | Temporary exemption based upon future use of synthetic fuels. |
| (c), (d) | Repealed. |
| (e) | Duration of temporary exemptions. |

8322.

Permanent exemptions.

- | | |
|-----|--|
| (a) | Permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or adequate capital. |
| (b) | Permanent exemption due to certain State or local requirements. |
| (c) | Permanent exemption for cogeneration. |
| (d) | Permanent exemption for certain mixtures containing natural gas or petroleum. |
| (e) | Permanent exemption for emergency purposes. |
| (f) | Permanent exemption for powerplants necessary to maintain reliability of service. |

8323.

General requirements for exemptions.

- | | |
|-----|---|
| (a) | Use of mixtures or fluidized bed combustion not feasible. |
| (b) | State approval required for powerplant. |
| (c) | No alternative power supply in the case of a powerplant. |

8324.

Terms and conditions; compliance plans.

- | | |
|-----|---------------------------------|
| (a) | Terms and conditions generally. |
| (b) | Compliance plans. |

SUBCHAPTER III—EXISTING FACILITIES

PART A—PROHIBITIONS

8341.

Existing electric powerplants.

- | | |
|-----|--|
| (a) | Certification by powerplants of coal capability. |
| (b) | Authority of Secretary to prohibit where coal or alternate fuel capability exists. |
| (c) | Authority of Secretary to prohibit excessive use in mixtures. |
| (d) | Amendment of subsection (a) and (c) certifications. |

8342.

Repealed.

8343.

Rules relating to case-by-case and category prohibitions.

- | | |
|-----|--|
| (a) | Case-by-case prohibitions. |
| (b) | Prohibitions applicable to categories of facilities. |

PART B—EXEMPTIONS

8351.

Temporary exemptions.

- | | |
|-----|--|
| (a) | Temporary exemption due to lack of alternate fuel supply, site limitations, or environmental requirements. |
| (b) | Temporary exemption based upon future use of synthetic fuels. |
| (c) | Temporary exemption based upon use of innovative technologies. |
| (d) | Temporary exemption for units to be retired. |
| (e) | Temporary public interest exemption. |